

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2013 Supplement

Including Acts of the 2013 Session of the General Assembly

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*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

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## Volume 29 2011 Edition

Title 40. Motor Vehicles and Traffic

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Including Annotations to the Georgia Reports  
and the Georgia Appeals Reports

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**Place in Pocket of Corresponding Volume of  
Main Set**

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Charlottesville, Virginia**

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ISBN 978-0-327-11074-3 (set)  
ISBN 978-1-4224-9386-1

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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2013 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 29, 2013.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2013 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2013 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 40

## MOTOR VEHICLES AND TRAFFIC

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## ARTICLE 1

### GENERAL PROVISIONS

#### 40-1-1. Definitions.

As used in this title, the term:

(1) "Alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

(3) "All-terrain vehicle" means any motorized vehicle designed for off-road use which is equipped with three or more nonhighway tires and which is 50 inches or less in width.

(4) "Arterial street" means any U.S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(5) "Authorized emergency vehicle" means a motor vehicle belonging to a public utility corporation or operated by the Department of Transportation and designated as an emergency vehicle by the Department of Public Safety; a motor vehicle belonging to a fire department or a certified private vehicle belonging to a volunteer firefighter or a fire-fighting association, partnership, or corporation; an ambulance; or a motor vehicle belonging to a federal, state, or local law enforcement agency, provided such vehicle is in use as an emergency vehicle by one authorized to use it for that purpose.

(6) "Bicycle" means every device propelled by human power upon which any person may ride, having only two wheels which are in tandem and either of which is more than 13 inches in diameter.

(6.1) "Bicycle lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating bicycles. Bicycle lanes shall at a minimum, unless impracticable, be required to meet

accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials.

(6.2) "Bicycle path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by bicycle riders.

(6.3) "Bicycle trailer" means every device pulled by a bicycle and designed by the manufacturer of such device to carry human passengers.

(7) "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(8) "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(8.01) "Class I all-terrain vehicle" means a motorized, off-highway recreational vehicle 50 inches or less in width with a dry weight of 1,200 pounds or less that travels on three or more nonhighway tires and is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(8.1) "Class II all-terrain vehicle" means a motorized, off-highway recreational vehicle which is not a class I all-terrain vehicle and which is 65 inches or less in width with a dry weight of 2,000 pounds or less that travels on four or more nonhighway tires and is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(8.2) "Class III all-terrain vehicle" means any motor vehicle that:

(A) Weighs more than a class II all-terrain vehicle and less than 8,000 pounds;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; and

(C) Is actually being operated off a highway.

(8.3) "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in intrastate and interstate commerce to transport passengers or property when the vehicle:



(A) Has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,537 kg (10,001 lbs.) or more;

(B) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used to transport material determined to be hazardous by the secretary of the United States Department of Transportation under 49 U.S.C. Section 5103 and transported in a quantity that requires placards under regulations prescribed under 49 C.F.R., Subtitle B, Chapter I, Subchapter C.

(9) “Controlled-access highway” means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except only at such points and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(10) “Crosswalk” means:

(A) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(B) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(11) “Dealer” means a person engaged in the business of buying, selling, or exchanging vehicles who has an established place of business in this state.

(12) “Demonstrator” means any motor vehicle which has not been the subject of a sale at retail to the general public but which has been operated on the roads of this state in the course of a motor vehicle dealer’s business.

(13) “Divided highway” means a highway divided into two or more roadways by leaving an intervening space or by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic.

(14) “Driver” means every person who drives or is in actual physical control of a vehicle.

(15) "Driver's license" means any license to operate a motor vehicle issued under the laws of this state.

(15.5) "Electric assisted bicycle" means a device with two or three wheels which has a saddle and fully operative pedals for human propulsion and also has an electric motor. For such a device to be considered an electric assisted bicycle, it shall meet the requirements of the Federal Motor Vehicle Safety Standards, as set forth in 49 C.F.R. Section 571, et seq., and shall operate in such a manner that the electric motor disengages or ceases to function when the brakes are applied. The electric motor in an electric assisted bicycle shall:

(A) Have a power output of not more than 1,000 watts;

(B) Be incapable of propelling the device at a speed of more than 20 miles per hour on level ground; and

(C) Be incapable of further increasing the speed of the device when human power alone is used to propel the device at or more than 20 miles per hour.

(15.6) "Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem wheeled device designed to transport only one person and having an electric propulsion system with average power of 750 watts (1 horsepower) and a maximum speed of less than 20 miles per hour on a paved level surface when powered solely by such propulsion system and ridden by an operator who weighs 170 pounds.

(16) "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(17) "Flammable liquid" means any liquid which has a flash point of 141 degrees Fahrenheit or less.

(18) "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

(18.1) "Hazardous material" means a substance or material as designated pursuant to the Federal Hazardous Materials Law, 49 U.S.C. Section 5103(a).

(19) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(20) “House trailer” means:

(A) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place or living abode (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(B) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subparagraph (A) of this paragraph, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(21) “Implement of husbandry” means a vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(21.1) “Infant sling” means every device which is designed by the manufacturer to be worn by a person for the purpose of carrying an infant either on the chest or back of the wearer.

(22)(A) “Intersection” means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(B) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(C) The junction of an alley with a street or highway shall not constitute an intersection.

(23) “Laned roadway” means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(24) “License” or “license to operate a motor vehicle” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

(A) Any temporary license or instruction permit;



(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege as defined in this Code section.

(24.1) "Lightweight commercial vehicle" means a motor vehicle which does not meet the definition of a commercial motor vehicle and which, in the furtherance of a commercial enterprise:

(A) Is used to transport hazardous materials in a type and quantity for which placards are not required in accordance with the Hazardous Materials Regulations prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, Subpart F, or compatible rules prescribed by the commissioner of public safety;

(B) Is used to transport property for compensation;

(C) Is used to transport passengers for compensation, other than a taxicab; or

(D) Is a wrecker or tow truck.

(24.2) "Limousine" has the same meaning as provided in paragraph (4) of Code Section 40-1-151.

(25) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the Constitution and laws of this state.

(25.1) "Low-speed vehicle" means any four-wheeled electric vehicle whose top speed attainable in one mile is greater than 20 miles per hour but not greater than 25 miles per hour on a paved level surface and which is manufactured in compliance with those federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001.

(26) "Manufacturer" means a person engaged in the manufacture of vehicles and who has an established place of business in this state.

(27) "Metal tire" means every tire of which the surface in contact with the highway is wholly or partly of metal or other hard, nonresilient material. A vehicle shall be considered equipped with metal tires when metal tires are used on two or more wheels.

(28) "Moped" means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters) regardless of the number of chambers in such power

source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour (48.28 kilometers per hour) on level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

(28.1) "Motor carrier" shall have the same meaning as provided for in Code Section 40-2-1, and the terms "carrier" and "motor carrier" are synonymous.

(29) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, and moped.

(30) "Motor driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower, every bicycle with a motor attached, and every moped.

(31) "Motor home" means every motor vehicle designed, used, or maintained primarily as a mobile dwelling, office, or commercial space.

(32) "Motorized cart" means every motor vehicle having no less than three wheels and an unladen weight of 1,300 pounds or less and which cannot operate at more than 20 miles per hour.

(33) "Motor vehicle" means every vehicle which is self-propelled other than an electric personal assistive mobility device (EPAMD).

(34) "New motor vehicle" means any motor vehicle which is not a demonstrator and has never been the subject of a sale at retail to the general public.

(35) "Nonresident" means every person who is not a resident of this state.

(36) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle or the use of a vehicle owned by such person in this state.

(37) "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title which are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(38) "Operator" means any person who drives or is in actual physical control of a motor vehicle.

(39) "Owner" means a person, other than a lienholder or security interest holder, having the property in or title to a vehicle. The term

includes a person entitled to the use and possession of a vehicle subject to a security interest in or lien by another person but excludes a lessee under a lease not intended as security except as otherwise specifically provided in this title.

(40) “Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(41) “Passenger car” means every motor vehicle, except motorcycles, motor driven cycles, and low-speed vehicles, designed for carrying ten passengers or less and used for the transportation of persons.

(42) “Pedestrian” means any person afoot.

(42.1) “Pedestrian hybrid beacon” means a special type of hybrid beacon used to warn and control traffic at locations without a traffic-control signal to assist pedestrians in crossing a street or highway at a marked crosswalk.

(43) “Person” means every natural person, firm, partnership, association, corporation, or trust.

(43.1) “Personal transportation vehicle” means any motor vehicle:

- (A) With a minimum of four wheels;
- (B) Capable of a maximum level ground speed of less than 20 miles per hour;
- (C) With a maximum gross vehicle unladen or empty weight of 1,375 pounds; and
- (D) Capable of transporting not more than eight persons.

The term does not include mobility aids, including power wheelchairs and scooters, that can be used indoors and outdoors for the express purpose of enabling mobility for a person with a disability. The term also does not include any all-terrain vehicle.

(44) “Pneumatic tire” means every tire in which compressed air is designed to support the load. A vehicle shall be considered equipped with pneumatic tires when pneumatic tires are used on all wheels.

(45) “Pole trailer” means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(46) "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(47) "Private road or driveway" means every way or place in private ownership and used for vehicular traffic by the owner and those having express or implied permission from the owner, but not by other persons.

(48) "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

(49) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(50) "Railroad train" means a steam engine or electric engine or other motor, with or without cars coupled thereto, operated upon rails.

(50.01) "Recreational off-highway vehicle" means a motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 65 inches or less in width.

(50.1) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of business or enterprise operations.

(51) "Residence district" means the territory contiguous to and including a highway not comprising a business district, when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

(52) "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(53) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to any such roadway separately, but not to all such roadways collectively.

(54) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is



protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(55) "School bus" means:

(A) A motor vehicle operated for the transportation of school children to and from school or school activities or for the transportation of children to and from church or church activities. Such term shall not include a motor vehicle with a capacity of 15 persons or less operated for the transportation of school children to and from school activities or for the transportation of children to and from church or church activities if such motor vehicle is not being used for the transportation of school children to and from school; or

(B) A motor vehicle operated by a local transit system which meets the equipment and identification requirements of Code Section 40-8-115; provided, however, that such vehicle shall be a school bus only while transporting school children and no other passengers to or from school.

(56) "Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(57) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a railway, and the adjacent property lines, intended for use by pedestrians.

(58) "Solid tires" means tires of rubber or similarly elastic material that do not depend on confined air for the support of the load. A vehicle shall be considered equipped with solid tires when solid tires are used on two or more wheels.

(59) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(60) “Stand” or “standing” means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(61) “State” means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

(62) “Stop” or “stopping”:

(A) When required, means complete cessation from movement;  
or

(B) When prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(63) “Street” means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(63.1) “Taxicab” means a motor vehicle for hire which conveys passengers between locations of their choice and is a mode of public transportation for a single passenger or small group for a fee. Such term shall also mean taxi or cab, but not a bus or school bus, limousine, passenger car, or commercial motor vehicle.

(64) “Through highway” means every highway or portion thereof on which vehicular traffic is given preferential right of way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right of way to vehicles on such through highway in obedience to a stop sign, yield sign, or other official traffic-control device, when such signs or devices are erected as provided in this title.

(65) “Tractor” means any self-propelled vehicle designed for use as a traveling power plant or for drawing other vehicles but having no provision for carrying loads independently.

(66) “Traffic” means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

(67) “Traffic-control signal” means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(68) “Trailer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(69) “Tripper service” means regularly scheduled mass transportation service which is open to the fare-paying public but which is also designed or modified to accommodate the needs of elementary or secondary school students and school personnel.

(70) “Truck” means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) “Truck camper” means any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space.

(72) “Truck tractor” means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(73) “Urban district” means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

(74) “Used motor vehicle” means any motor vehicle which has been the subject of a sale at retail to the general public.

(75) “Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(76) “Wrecker” means a vehicle designed, equipped, or used to tow or carry other motor vehicles by means of a hoist, crane, sling, lift, or roll-back or slide back platform, by a mechanism of a like or similar character, or by any combination thereof, and the terms “tow truck” and “wrecker” are synonymous. (Ga. L. 1927, p. 226, § 2; Code 1933, § 68-101; Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 1-9, 11, 13-21; Ga. L. 1966, p. 183, § 1; Ga. L. 1970, p. 586, § 1; Ga. L. 1973, p. 595, § 1; Ga. L. 1973, p. 598, § 1; Code 1933, § 68A-101, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 1; Ga. L. 1978, p. 2241, §§ 1, 3, 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1983, p. 633, § 1; Ga. L. 1988, p. 691, §§ 1, 2; Ga. L. 1988, p. 1893, § 1; Ga. L. 1989, p. 1792, § 1; Ga. L. 1990, p. 2048, § 1; Ga. L. 1993, p. 518, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 236, § 1; Ga. L. 1997, p. 419, § 1; Ga. L. 1999, p. 334, § 1; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 506, § 2; Ga. L. 2002, p. 512, §§ 2, 3; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2002, p. 1378, § 1; Ga. L. 2003, p. 308, §§ 1, 2, 3; Ga. L. 2004, p. 67, § 1; Ga. L. 2004, p. 746, § 1; Ga. L. 2006, p. 428, § 1/HB 654; Ga. L. 2007, p. 652, § 1/HB 518; Ga. L. 2010, p. 143, § 1/HB 1005; Ga. L. 2010, p. 442, § 4/HB 1174; Ga. L. 2011, p. 247, § 1/SB 240; Ga. L. 2011, p. 426, § 1/HB 101; Ga. L. 2011, p. 479, §§ 6, 7, 8/HB 112; Ga. L. 2012, p. 726, §§ 1, 2, 3/HB 795; Ga. L. 2013, p. 141, § 40/HB 79.)



The 2012 amendment, effective May 1, 2012, substituted “more nonhighway tires and which is 50 inches or less in width” for “more low pressure tires and with a seat to be straddled by the operator and with handlebars for steering control” in paragraph (3); redesignated former paragraph (8.1) as present paragraph (8.01); substituted “1,200 pounds or less that travels on three or more nonhighway tires” for “1,000 pounds or less that travels on three or more low-pressure tires, has a

saddle or seat for the operator,” in paragraph (8.01); added paragraph (8.1); in paragraph (8.2), substituted “Class III” for “Class II” in the introductory paragraph; substituted “class II” for “class I” in subparagraph (8.2)(A); and added paragraph (50.01).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 40-1-151” for “Code Section 46-7-85.1” at the end of paragraph (24.2).

JUDICIAL DECISIONS

ANALYSIS

HIGHWAY

Highway

**Berm or shoulder not part of roadway.** — O.C.G.A. § 40-1-1(53) defines the term “roadway” as “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway

includes two or more separate roadways, the term ‘roadway’ shall refer to any such roadway separately, but not to all such roadways collectively.” The statutory definition excludes the berm or shoulder from being a part of the roadway. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

**40-1-8. Definitions; safe operations of motor carriers and commercial motor vehicles; civil penalties; operation of out-of-service vehicles; criminal penalties.**

- (a) As used in this Code section, the term:
  - (1) “Commissioner” means the commissioner of public safety.
  - (2) “Department” means the Department of Public Safety.

(b) The commissioner shall have the authority to promulgate rules and regulations for the safe operation of motor carriers, the safe operation of commercial motor vehicles and drivers, and the safe transportation of hazardous materials. Any such rules and regulations promulgated or deemed necessary by the commissioner shall include, but are not limited to, the following:

- (1) Every commercial motor vehicle and all parts thereof shall be maintained in a safe condition at all times; and the lights, brakes, and equipment shall meet such safety requirements as the commissioner shall from time to time promulgate;
- (2) Every driver employed to operate a motor vehicle for a motor carrier shall:

(A) Be at least 18 years of age to operate a motor vehicle for a motor carrier intrastate and at least 21 years of age to operate a motor vehicle for a motor carrier interstate;

(B) Meet the qualification requirements the commissioner shall from time to time promulgate;

(C) Be of temperate habits and good moral character;

(D) Possess a valid driver's license;

(E) Not use or possess prohibited drugs or alcohol while on duty; and

(F) Be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;

(3) Accidents arising from or in connection with the operation of commercial motor vehicles shall be reported to the commissioner of transportation in such detail and in such manner as the commissioner of transportation may require;

(4) The commissioner shall require each commercial motor vehicle to have attached such distinctive markings as shall be adopted by the commissioner. Such identification requirements shall comply with the applicable provisions of the federal Unified Carrier Registration Act of 2005; and

(5) The commissioner shall provide distinctive rules for the transportation of unmanufactured forest products in intrastate commerce to be designated the "Georgia Forest Products Trucking Rules."

(c)(1) Regulations governing the safe operations of motor carriers, commercial motor vehicles and drivers, and the safe transportation of hazardous materials may be adopted by administrative order, including, but not limited to, by referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's Internet site. The commissioner may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State the name and designation of such rules, regulations, standards, and orders. The courts shall take judicial notice of rules, regulations, standards, or orders so adopted or published.

(2) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in full force and effect until

such time as the commissioner of public safety adopts, issues, or promulgates new rules, regulations, or orders pursuant to the provisions of this Code section.

(d)(1) The commissioner may, pursuant to rule or regulation, specify and impose civil monetary penalties for violations of laws, rules, and regulations relating to driver and motor carrier safety and transportation of hazardous materials. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005.

(2) A cause of action for the collection of a penalty imposed pursuant to this subsection may be brought in the superior court of the county where the principal place of business of the penalized company is located or in the superior court of the county where the action giving rise to the penalty occurred.

(e) The commissioner is authorized to adopt such rules and orders as he or she may deem necessary in the enforcement of this Code section. Such rules and orders shall have the same dignity and standing as if such rules and orders were specifically provided in this Code section. The commissioner is authorized to establish such exceptions or exemptions from the requirements of this Code section, as he or she shall deem appropriate, consistent with any federal program requirements, and consistent with the protection of the public health, safety, and welfare.

(f)(1) The commissioner may designate members of the department, pursuant to Article 5 of Chapter 2 of Title 35, to perform regulatory compliance inspections. Members of county, municipal, campus, and other state agencies may be designated by the commissioner to perform regulatory compliance inspections only of vehicles, drivers, and cargo in operation, and may only enforce the provisions of rules and regulations promulgated under this Code section or Article 2 of this chapter subject to the provisions of a valid agreement between the commissioner and the county, municipal, campus, or other state agency.

(2) Unless designated and authorized by the commissioner, no members of county, municipal, campus, and other state agencies may perform regulatory compliance inspections.

(g) No person shall drive or operate, or cause the operation of, a vehicle in violation of an out-of-service order. As used in this subsection, the term "out-of-service order" means a temporary prohibition against operating as a motor carrier or driving or moving a vehicle, freight container or any cargo thereon, or any package containing a hazardous material.



(h) Unless otherwise provided by law, a motor carrier or operator of a commercial motor vehicle shall comply with the:

- (1) Motor carrier safety standards found in 49 C.F.R. Part 391;
- (2) Seatbelt usage requirements found in 49 C.F.R. Section 392.16; and
- (3) Hours of service and record of duty status requirements of 49 C.F.R. Part 395.

(i) A person failing to comply with the requirements of paragraph (2) of subsection (h) of this Code section shall be guilty of the misdemeanor offense of failure to wear a seat safety belt while operating a commercial motor vehicle and, upon conviction thereof, shall be fined not more than \$50.00 but shall not be subject to imprisonment. The costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. No points shall be added pursuant to Code Section 40-5-57 and no additional fines or penalties shall be imposed.

(j) Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this Code section or any order, rule, or regulation adopted pursuant to this Code section, or who procures, aids, or abets a violation of this Code section or such rule or regulation, shall be guilty of a misdemeanor. Misdemeanor violations of this Code section may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title. (Code 1981, § 40-1-8, enacted by Ga. L. 2011, p. 479, § 9/HB 112; Ga. L. 2013, p. 838, § 1/HB 323.)

**The 2013 amendment**, effective July 1, 2013, substituted the present provisions of paragraph (b)(2) for the former provisions, which read: “Every driver employed to operate a motor vehicle for a motor carrier shall be at least 18 years of age, meet the qualification requirements the commissioner shall from time to time promulgate, be of temperate habits and good moral character, possess a valid driver’s license, not use or possess prohibited drugs or alcohol while on duty, and be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;”; substituted “federal” for “Fed-

eral” in the second sentence of paragraph (b)(4); designated the existing provisions of subsection (d) as paragraph (d)(1) and added paragraph (d)(2); inserted a comma in the first sentence of subsection (f); added subsections (h) and (i); and redesignated former subsection (h) as present subsection (j). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offenses arising from a violation of O.C.G.A. § 40-1-8 do not, at this time, appear to be offenses for which fingerprinting is required. 2011 Op. Att’y Gen. No. 11-5.

ARTICLE 2

TRANSPORTATION OF HAZARDOUS MATERIALS

**40-1-23. Regulatory compliance inspections; notification; contacts with state; permit required for transporting materials; escorts or inspections; exceptions; recovery for damage or discharge; civil monetary penalties; routing agencies; adoption of regulations.**

OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required.** — Offenses arising from a violation of O.C.G.A. § 40-1-23 are offenses for which fingerprinting is required. 2011 Op. Att’y Gen. No. 11-5.

ARTICLE 3

MOTOR CARRIERS

**Effective date.** — This article became effective July 1, 2012.

PART 1

GEORGIA MOTOR CARRIER ACT OF 2012

**40-1-50. Short title.**

This article shall be known and may be cited as the “Georgia Motor Carrier Act of 2012.” (Code 1981, § 40-1-50, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**Cross references.** — Standard of care to be observed by common carriers generally, § 46-9-1. Creation of Railway Passenger Service Corridor System, Ch. 9A, T. 46. Road tax on motor carriers, § 48-9-30 et seq.

**40-1-51. Legislative findings; construction.**

The General Assembly finds that the for-hire transportation of persons and property are a privilege that require close regulation and control to protect public welfare, provide for a competitive business environment, and provide for consumer protection. To that end, the provisions of this article are enacted. This is a remedial law and shall

be liberally construed. The Department of Public Safety is designated as the agency to implement and enforce this article. Exceptions contained in this article shall have no effect on the applicability of any other provision of law applicable to motor vehicles, commercial motor vehicles, operators of motor vehicles, or carrier operations. (Code 1981, § 40-1-51, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### 40-1-52. Establishment of Motor Carrier Compliance Division.

There is created and established a division within the Department of Public Safety to be known as the Motor Carrier Compliance Division which shall include a section designated the Regulatory Compliance Section. Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance Division shall be known and designated as law enforcement officers. The Regulatory Compliance Section shall be responsible for the regulation of the operation of motor carriers and limousine carriers in accordance with this article, Code Section 40-1-8, and Article 2 of this chapter. (Code 1981, § 40-1-52, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 2/HB 323.)

**The 2013 amendment**, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “There is created and established a division within the Department of Public Safety to be known as the Motor Carrier Compliance Division. The Motor Carrier Compliance Division shall consist of two sections, the Motor Carrier Compliance Enforcement Section and the Motor Carrier Regulation Compliance Section. Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance Enforcement Section shall be known and designated as law enforcement officers. The Motor Carrier

Regulation Compliance Section shall be responsible for the regulation of the operation of motor carriers and limousine carriers in accordance with this article and motor carrier safety and the transportation of hazardous materials as provided in Code Section 40-1-8 and Article 2 of this chapter.” See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

#### 40-1-53. “Department” defined; methods of enforcement.

(a) As used in this article, the term “department” means the Department of Public Safety.

(b) The department is authorized to enforce this article by instituting actions for injunction, mandamus, or other appropriate relief. (Code 1981, § 40-1-53, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 3/HB 323.)

**The 2013 amendment**, effective July 1, 2013, added subsection (a); and designated the existing provisions of this Code

section as subsection (b). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and

shall apply to violations committed on or after such date”.

JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1931, p. 199, § 29, former Code 1933, § 68-632, and former O.C.G.A. § 46-7-31 are included in the annotations for this Code section.

**The 1931 law was regulatory in nature,** and all persons proposing to conduct the business of a motor carrier as defined thereby must submit themselves to the jurisdiction and control of the commission. *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933) (decided under Ga. L. 1931, p. 199, § 29).

**Meaning of language “or any individual”.** — Words “or any individual” mean any other person having an interest in the subject matter, such as any individual who competed with the common carrier, and would not authorize the grant of

an injunction at the instance of individuals whose only interest was as citizens and taxpayers. *Gulledge v. Augusta Coach Co.*, 210 Ga. 377, 80 S.E.2d 274 (1954) (decided under former Code 1933, § 68-632).

**“Required certificate” necessary.** — Mere fact that a carrier was a certificate holder would afford the carrier no protection. The question was did the carrier have the required certificate that was one under the terms of which the carrier’s particular operation was authorized. *Bass v. Georgia Public-Service Comm’n*, 192 Ga. 106, 14 S.E.2d 740 (1941) (decided under former Code 1933, § 68-632).

**Cited** in *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933); *Georgia Pub. Serv. Comm’n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 33, 125, 146.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 207, 209, 210.

40-1-54. Rules and regulations for implementation and administration.

(a) The department shall promulgate such rules and regulations as are necessary to effectuate and administer the provisions of this article pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(b) The commissioner is authorized to issue such orders, authorizations, and modification thereof as necessary to implement this article.

(c) A court shall take judicial notice of all rules and regulations promulgated by the department pursuant to this Code section. (Code 1981, § 40-1-54, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-55. Penalty for violations.

Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this article relating to the regulation of motor carriers and limousine carriers or any order, rule, or



regulation of the Department of Public Safety, or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title. (Code 1981, § 40-1-55, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Editor's note.** — In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-39 are included in the annotations for this Code section.

**Fingerprinting not required.** — Offense arising from a violation of former

O.C.G.A. § 46-7-39 did not, at this time, appear to be an offense for which fingerprinting was required; thus, this offense was not designated as one for which those charged were to be fingerprinted. 2010 Op. Att'y Gen. No. 2010-2. (decided under former O.C.G.A. § 46-7-39).

#### **40-1-56. Financial penalty for violations; suspension of certificate or permit; notice; review.**

(a) Any motor carrier or limousine carrier subject to the provisions of Part 2 or Part 3 of this article that fails to register as a motor carrier or limousine carrier with the department or that is subject to the jurisdiction of the department and willfully violates any law administered by the department or any duly promulgated regulation issued thereunder, or that fails, neglects, or refuses to comply with any order after notice thereof, shall be liable for a penalty not to exceed \$15,000.00 for such violation and an additional penalty not to exceed \$10,000.00 for each day during which such violation continues.

(b) Following a reasonable attempt to notify a holder of a certificate, the commissioner is authorized to immediately suspend a motor carrier or limousine carrier certificate or permit if the commissioner finds that such suspension is necessary to protect against an immediate threat to the life, health, or safety of others. An emergency suspension made pursuant to this subsection may be appealed by filing a request for administrative review with the department within 30 days of receipt of notice of the department's decision. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Notice of a violation and the assessed amount shall be made by means of personal service upon the violator. The notice shall include a warning that a vehicle related to the violation may be subject to suspension of the registration pursuant to Code Section 40-1-56.1. The respondent shall then have 60 days in which to pay the assessed penalty or file with the department a written request for an administrative review. The request for an administrative review shall specify whether the respondent is challenging the validity of the imposition of

the penalty or the amount of the assessment, or both. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(d)(1) All penalties and interest thereon, at the rate of 10 percent per annum, recovered by the department shall be paid into the general fund of the state treasury.

(2) Reissuance fees charged by the Department of Revenue shall be retained by the Department of Revenue.

(3) Restoration fees charged by the department shall be retained by the department.

(e)(1) Any party who has exhausted all administrative remedies available before the department and who is aggrieved by a final decision of the department made pursuant to this Code section may seek judicial review of the final order of the department in the Superior Court of Fulton County or in the superior court of the county in which the principal place of business of the aggrieved party is located.

(2) Proceedings for review shall be instituted by filing a petition within 30 days after the service of the final decision of the department or, if a rehearing is requested, within 30 days after the decision thereon. A motion for rehearing or reconsideration after a final decision by the department shall not be a prerequisite to the filing of a petition for review. Copies of the petition shall be served upon the department and all parties of record before the department.

(3) The petition shall state the nature of the petitioner’s interest, the facts showing that the petitioner is aggrieved by the decision, and the ground upon which the petitioner contends the decision should be reversed. The petition may be amended by leave of court.

(4) Within 30 days after service of the petition or within such further time as is stipulated by the parties or as is allowed by the court, the agency shall have transmitted to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate that the record be limited may be taxed for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the

department or remand the case for further proceedings. The court may reverse the decision of the department if substantial rights of the petitioner have been prejudiced because the department's findings, inferences, conclusions, or decisions are:

- (A) In violation of constitutional or statutory provisions;
- (B) In excess of the statutory authority of the department;
- (C) Made upon unlawful procedure;
- (D) Clearly not supported by any reliable, probative, and substantial evidence on the record as a whole; or
- (E) Arbitrary or capricious.

(6) A party aggrieved by an order of the court may appeal to the Supreme Court or to the Court of Appeals in accordance with Article 2 of Chapter 6 of Title 5, the "Appellate Practice Act." (Code 1981, § 40-1-56, enacted by Ga. L. 2013, p. 838, § 4/HB 323.)

**Effective date.** — This Code section became effective July 1, 2013. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

Ga. L. 2013, p. 838, § 4/HB 323 repealed former Code Section 40-1-56, pertaining to a penalty for a failure to register, administrative procedures, and judicial review, effective July 1, 2013, and enacted the present Code section. The former Code section was based on Ga. L. 2012, p. 580, § 1/HB 865.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-621 are included in the annotations for this Code section.

**No provision for unconditional review.** — There was no provision in former Code 1933, § 68-621 for unconditional review, but it was to be under the conditions and subject to the limitations as now prescribed by law as related to the commission. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 181 Ga. 75, 181 S.E. 834, answer conformed to, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-621).

**No right to review order of commission by writ of certiorari.** — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier and, thereafter such certificate is revoked and

canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier's failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-621).

**No interference with order of commission unless showing of unreasonableness.** — Neither the trial court, nor the Supreme Court on review, will substitute the court's own discretion and judgment for that of the commission when the



commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and neither court will interfere with a valid order of the commission unless it be clearly shown

that the order was unreasonable, arbitrary, or capricious. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-621).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 140 et seq., 146.

**C.J.S.** — 13 C.J.S., Carriers, § 373. 60 C.J.S., Motor Vehicles, §§ 114 et seq., 174, 192 et seq.

**ALR.** — Right to maintain action against carrier on ground that rates which were filed and published by carrier pursuant to law were excessive, 97 ALR 406.

#### **40-1-56.1. Liens on identifiable vehicles; perfection; suspension of registration.**

(a) Whenever any motor carrier or limousine carrier owes penalties to the department which were imposed for violations pursuant to Code Section 40-1-56 and the violation relates to an identifiable vehicle, then the motor carrier or limousine carrier shall have 60 days from the date of the assessed penalty or final judicial review following an appeal of the assessment. If the assessment is not paid within the 60 days, such assessment shall become a lien upon the identified motor vehicle found to be in violation, and the lien shall be superior to all liens except liens for taxes or perfected security interests established before the debt to the department was created.

(b) The department shall perfect the lien created under this Code section by sending notice thereof on a notice designated by the department, by first-class mail or by statutory overnight delivery, return receipt requested, to the owner and all holders of liens and security interests shown on the records of the Department of Revenue maintained pursuant to Chapter 3 of this title. Upon receipt of notice from the Department of Public Safety, the holder of the certificate of title shall surrender the same to the state revenue commissioner for issuance of a replacement certificate of title bearing the lien of the department unless the assessment is paid within 60 days of the receipt of notice. The Department of Revenue may append the lien to its records, notwithstanding the failure of the holder of the certificate of title to surrender such certificate as required by this subsection.

(c) Upon issuance of a title bearing the lien of the department, or the appending of the lien to the records of the Department of Revenue, the owner of the vehicle or the holder of any security interest or lien shown in the records of the Department of Revenue may satisfy such lien by payment of the amount of the assessment, including hearing costs, if any, and payment of an additional reissuance fee of \$100.00 which shall be paid to the Department of Revenue. Upon receipt of such amount,

the department shall release its lien and the Department of Revenue shall issue a new title without the lien.

(d)(1) The department, in seeking to foreclose its lien on the motor vehicle arising out of an assessed violation pursuant to Code Section 40-1-56, may seek an immediate writ of possession from the court before whom the petition is filed, if the petition contains a statement of facts, under oath, by the department, its agents, its officers, or attorney setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an immediate writ of possession.

(2) The department shall allege under oath specific facts sufficient to show that it is within the power of the defendant to conceal, encumber, convert, convey, or remove from the jurisdiction of the court the property which is the subject matter of the petition.

(3) The court before whom the petition is pending shall issue a writ for immediate possession upon finding that the petitioner has complied with paragraphs (1) and (2) of this subsection. If the petitioner is found not to have made sufficient showing to obtain an immediate writ of possession, the court may, nevertheless, treat the petition as one being filed under Code Section 44-14-231 and proceed accordingly.

(4) When an immediate writ of possession has been granted, the department shall proceed against the defendant in the same manner as provided for in Code Sections 44-14-265 through 44-14-269.

(e)(1) Whenever any motor carrier or limousine carrier fails within 60 days of the date of issuance of a penalty involving an identifiable vehicle assessed pursuant to Code Section 40-1-56 either to pay the assessment or appeal to the department for an administrative review, the Department of Revenue may act to suspend the motor vehicle registration of the vehicle involved. However, if the motor carrier or limousine carrier requests an administrative review, the Department of Revenue shall act to suspend the registration only after the issuance of a final decision favorable to the department and the requisite failure of the motor carrier or limousine carrier to pay the assessment. Upon such failure to pay the assessment, the Department of Revenue shall send a letter to the owner of such motor vehicle notifying the owner of the suspension of the motor vehicle registration issued to the motor vehicle involved in violation which was the basis for the penalty. Upon complying with this subsection by paying the overdue assessment, submitting proof of compliance, and paying a \$10.00 restoration fee to the Department of Revenue, the state revenue commissioner shall reinstate any motor vehicle registration suspended under this subsection. In cases where the motor vehicle registration has been suspended under this subsection for a second or

subsequent time during any two-year period, the Department of Revenue shall suspend the motor vehicle registration for a period of 60 days and thereafter until the owner submits proof of compliance with this subsection and pays a \$150.00 restoration fee to the Department of Revenue.

(2) Unless otherwise provided for in this Code section, notice of the effective date of the suspension of a motor vehicle registration occurs when the owner has actual knowledge or legal notice thereof, whichever first occurs. For the purposes of making any determination relating to the restoration of a suspended motor vehicle registration, no period of suspension shall be deemed to have begun until ten days after the mailing of the notice required in paragraph (1) of this subsection.

(3) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to a motor carrier or limousine carrier at the name and address shown in records of the Department of Revenue maintained under Chapter 3 of this title shall, with respect to the holders of liens and security interests, be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(4) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to owners and operators of vehicles involved in a penalty assessed pursuant to 40-1-56 shall be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(5) The state revenue commissioner may suspend the motor vehicle registration of any offending vehicle for which payment of an assessment is made by a check that is returned for any reason. (Code 1981, § 40-1-56.1, enacted by Ga. L. 2013, p. 838, § 5/HB 323.)

**Effective date.** — This Code section became effective July 1, 2013. See editor's note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, a misspelling of "reissuance" was corrected in subsection (c).

**Editor's notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

## 40-1-57. Rules of Public Service Commission.

Rules, orders, and regulations previously adopted which relate to functions performed by the Public Service Commission which were transferred under this article to the Department of Public Safety shall remain of full force and effect as rules, orders, and regulations of the Department of Public Safety until amended, repealed, or superseded by rules or regulations adopted by the department. (Code 1981, § 40-1-57,



enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, a misspelling of “Public” was corrected.

**The 2013 amendment,** effective April

24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68-629 and 68-523, and former O.C.G.A. § 46-7-27 are included in the annotations for this Code section.

**Rule of the commission is not “law of the state”** within the meaning of that term as used in the provisions of the Constitution giving exclusive jurisdiction on appeal to Supreme Court to pass on constitutionality of state law. *Reliable Transf. Co. v. May*, 70 Ga. App. 613, 29 S.E.2d 187 (1944) (decided under former Code 1933, § 68-629).

**Commission acts in quasi-legislative manner.** — As the commission was authorized to adopt such rules and orders as the commission may deem necessary in the enforcement of the provisions of the statutory law regarding motor common carriers, the commission, therefore, acts in a quasi-legislative manner. *Georgia Pub. Serv. Comm’n v. Smith Transf. Co.*, 207 Ga. 658, 63 S.E.2d 653 (1951) (decided under former Code 1933, § 68-629).

**Commission rules have same force and effect as statute.** — Rule passed by the commission in pursuance of the statutory law regarding motor common carriers had the force and effect of a law or statute of this state. *Maner v. Dykes*, 52 Ga. App. 715, 184 S.E. 438 (1936), later appeal, 55 Ga. App. 436, 190 S.E. 189 (1937) (decided under former Code 1933, § 68-629).

Commission had authority and power to adopt such rules and regulations within the scope of the legislative enactment, and as an effective means of enforcing the statutory law respecting motor common carriers, and such rules and regulations have the same force and effect as that of a

statute. *Georgia Pub. Serv. Comm’n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957) (decided under former Code 1933, § 68-629).

**Delegation of regulatory power by Legislature proper.** — Legislature could clearly designate the Public Service Commission to act for the legislature in seeing that public service motor vehicles conformed to the regulatory laws applicable to those vehicles, leaving to that body the working out of the minor details regarding such regulations. *Maner v. Dykes*, 55 Ga. App. 436, 190 S.E. 189 (1937) (decided under former Code 1933, § 68-629).

**Commission not bound by strict rules of evidence in conducting hearings.** — Commission was authorized by former Code 1933, § 68-523 to adopt rules of evidence and procedure in carrying out the Commission’s duties in the administration of the law, and was not bound by strict rules of evidence in conducting the commission’s hearings. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm’n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-523).

**Effect of introduction of ex parte affidavits at hearing upon commission order.** — Upon a hearing by the commission on an application for a certificate of public convenience and necessity, the mere introduction before that body of ex parte affidavits does not invalidate the order of the commission. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm’n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-523).

**Judicial notice required.** — Courts are required to judicially notice rules and regulations promulgated or adopted by the Commissioner of the Department of Motor Vehicle Safety under former O.C.G.A. §§ 46-7-26 and 46-7-27. *State v.*



Ponce, 279 Ga. 651, 619 S.E.2d 682 (2005) (decided under former O.C.G.A. § 46-7-27).

**Cited** in Bass v. Georgia Public-Service Comm'n, 192 Ga. 106, 14 S.E.2d 740

(1941); Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193 (1983); Kinard v. National Indem. Co., 225 Ga. App. 176, 483 S.E.2d 664 (1997).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 21 et seq., 27 et seq., 130, 140 et seq.

**ALR.** — State regulation of carriers by

motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

## PART 2

### CERTIFICATION OF MOTOR CARRIERS

#### JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, §§ 68-504, 68-604, and 68-605 and former O.C.G.A. §§ 46-7-3 and 46-7-53, are included in the annotations for this Code section.

**Construction with other provisions.** — Provisions of former Code 1933, § 68-504 were the same as provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609 were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-504).

**Public interest more than five elements contained in subsection (f).** — Both former Code 1933, § 68-504, which related to "motor contract carriers" and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public con-

venience and necessity from the commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements yet comprehends much more. J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-504).

**No right to be free from competition.** — Former Code 1933, § 68-504 did not afford the right to be free from competition. Wells Fargo Armored Serv. Corp. v. Georgia Pub. Serv. Comm'n, 547 F.2d 938 (5th Cir. 1977) (decided under former Code 1933, § 68-504).

**Publisher not liable for unknowingly using unlicensed distributor.** — Since there is no duty on the part of a newspaper publisher to inquire and ascertain if a distributor is properly licensed by the Public Service Commission, a publisher cannot be held liable for the negligent driving of its distributor's delivery vehicle on the ground that the driver was not licensed. Tanner v. USA Today, 179 Ga. App. 722, 347 S.E.2d 690 (1986) (decided under former O.C.G.A. § 46-7-53).

**Power to select, limit and prohibit uses of highways by carriers for hire,** which is implied in the requirement of a certificate of public convenience and necessity, is justified both as a regulation of the business, and as a regulation for the

protection and safety of the highways. There is thereby no unequal protection of law, but a reasonable classification. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

**Doing business on highways is privilege which may be conditioned or withheld.** — Motor carriers are engaged in a business that is regulatable, and doing that business on the highways by a privilege which may be conditioned or withheld. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

**Certificate and annual license fee are legally demandable by state.** — Certificate of public convenience and necessity, with a reasonable fee therefor, and an annual license fee for the trucks are legally demandable by a state as a nondiscriminatory prerequisite of the use of the highway for carrier purposes, even though the commerce involved is wholly interstate. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

**Authority of state to regulate use of roads.** — State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from their common uses and purposes to the carrier's business. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

**Interstate carrier to pay for use of highway.** — Interstate carrier has no better right than any other to use the state's improved highway without the state's consent, or without paying for the use. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

**Directory or advisory nature of statutory elements of proof of public convenience and necessity.** — In determining whether the public interest required the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not man-

datory that each be proved before the commission was authorized to grant a certificate, reviewing courts recognize that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-604).

**Notice of cancellation.** — Former O.C.G.A. § 46-7-3 required motor carriers to obtain a certificate of public convenience which may not be issued until a surety bond or evidence of a policy of indemnity insurance is filed with the Public Service Commission (PSC). Under PSC Rule 1-8-1-.07, policies of insurance evidenced by a Form E certificate filed with the PSC remain in effect until cancelled as prescribed by that rule. The filing of a Form E certificate of insurance establishes that a specified policy of insurance has been issued to the motor carrier and that the policy continues in effect until canceled by giving notice to the PSC. *Progressive Preferred Ins. Co. v. Ramirez*, 277 Ga. 392, 588 S.E.2d 751 (2003) (decided under former O.C.G.A. § 46-7-3).

Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former O.C.G.A. § 46-7-3 to operate as carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. *Kolencik v. Stratford Ins. Co.*, No. 1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-3).

**Cited in** *Phillips v. International Agric. Corp.*, 54 Ga. App. 751, 189 S.E. 54 (1936); *Bass v. Georgia Public-Service Comm'n*, 192 Ga. 106, 14 S.E.2d 740 (1941); *Gallahar v. George A. Rheman Co.*, 50 F. Supp. 655 (S.D. Ga. 1943); *Georgia Pub. Serv. Comm'n v. Smith Transf. Co.*, 207 Ga. 658, 63 S.E.2d 653 (1951); *Coleman v. B-H Transfer Co.*, 284 Ga. 624, 669 S.E.2d 141 (2008).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-604, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Exception to requirements of this section.** — Temporary emergency authority granted under former Code 1933, § 68-611.1 was an exception to the general requirement of former Code 1933, § 68-604 that no motor common carrier can operate without first obtaining a cer-

tificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-604)

**Unconstitutional delegation of authority.** — If the commission issued a certificate of public convenience and necessity which automatically terminated upon the decision of the municipality to terminate the contract with the certificate holder, the commission would have unlawfully delegated its authority to issue certificates to that municipality. 1980 Op. Att'y Gen. No. 80-162 (decided under former Code 1933, § 68-605).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, § 125 et seq.

**Am. Jur. Pleading and Practice Forms.** — 3B Am. Jur. Pleading and Prac-

tice Forms, Automobiles and Highway Traffic, § 602.

**C.J.S.** — 60 C.J.S., Motor Vehicles, § 187 et seq.

## 40-1-100. Definitions.

As used in this part, the term:

(1) "Carrier" means a person who undertakes the transporting of goods or passengers for compensation.

(2) "Certificate" or "motor carrier certificate" means a certificate of public convenience and necessity issued pursuant to this part or under the "Motor Carrier Act of 1929," under the "Motor Carrier Act of 1931," or under prior law.

(3) "Commissioner" means the commissioner of public safety.

(4) "Company" shall include a corporation, a firm, a partnership, an association, or an individual.

(5) "Corporate sponsored vanpool" means a rideshare program sponsored by an employer in which the employer pays all or some of the costs associated with the transportation of its employees to a single work reporting location and all the vehicles used in the program have a manufacturer's gross vehicle weight rating of not more than 10,000 pounds and are designed to carry not more than 15 passengers including the driver.

(6) "Department" means the Department of Public Safety.

(7) "Exempt rideshare" means:

(A) Government endorsed rideshare programs;



(B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the rideshare participants pool or otherwise share, rideshare costs such as fuel; or

(C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's business, for rideshare purposes as part of a government endorsed rideshare program, or for rideshare under a contract requiring compliance with subparagraph (B) of this paragraph.

(8) "For compensation" or "for hire" means an activity relating to a person engaged in the transportation of goods or passengers for compensation.

(9) "Government endorsed rideshare program" means a vanpool, carpool, or similar rideshare operation conducted by or under the auspices of a state or local governmental transit instrumentality, such as GRTA, a transportation management association, or a community improvement district, or conducted under the auspices of such transit agencies, including through any form of contract between such transit instrumentality and private persons or businesses.

(10) "GRTA" means the Georgia Regional Transportation Authority, which is itself exempt from regulation as a carrier under Code Section 50-32-71.

(11) "Household goods" means any personal effects and property used or to be used in a dwelling when a part of the equipment or supplies of such dwelling and such other similar property as the commissioner may provide for by regulation; provided, however, that such term shall not include property being moved from a factory or store except when such property has been purchased by a householder with the intent to use such property in a dwelling and such property is transported at the request of, and with transportation charges paid by, the householder.

(12) "Motor carrier" means:

(A) Every person owning, controlling, operating, or managing any motor vehicle, including the lessees, receivers, or trustees of such persons or receivers appointed by any court, used in the business of transporting for hire persons, household goods, or property or engaged in the activity of nonconsensual towing pursuant to Code Section 44-1-13 for hire over any public highway in this state.

(B) Except as otherwise provided in this subparagraph, the term "motor carrier" shall not include:



(i) Motor vehicles engaged solely in transporting school children and teachers to and from public schools and private schools;

(ii) Taxicabs which operate within the corporate limits of municipalities and are subject to regulation by the governing authorities of such municipalities; the provisions of this division notwithstanding, vehicles and the drivers thereof operating within the corporate limits of any city shall be subject to the safety regulations adopted by the commissioner of public safety pursuant to Code Section 40-1-8;

(iii) Limousine carriers as provided for in Part 3 of this article;

(iv) Hotel passenger or baggage motor vehicles when used exclusively for patrons and employees of such hotel;

(v) Motor vehicles operated not for profit with a capacity of 15 persons or less when they are used exclusively to transport elderly and disabled passengers or employees under a corporate sponsored vanpool program, except that a vehicle owned by the driver may be operated for profit when such driver is traveling to and from his or her place of work, provided each such vehicle carrying more than nine passengers maintains liability insurance in an amount of not less than \$100,000.00 per person and \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this part, elderly and disabled passengers are defined as individuals over the age of 60 years or who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable to utilize mass transportation facilities as effectively as persons who are not so affected;

(vi) Motor vehicles owned and operated exclusively by the United States government or by this state or any subdivision thereof;

(vii) Vehicles, owned or operated by the federal or state government or by any agency, instrumentality, or political subdivision of the federal or state government, or privately owned and operated for profit or not for profit, capable of transporting not more than ten persons for hire when such vehicles are used exclusively to transport persons who are elderly, disabled, en route to receive medical care or prescription medication, or returning after receiving medical care or prescription medication. For the purpose of this part, elderly and disabled persons shall have the same meaning as in division (v) of this subparagraph; or

(viii) Ambulances.

(13) “Passenger” means a person who travels in a public conveyance by virtue of a contract, either express or implied, with the carrier as to the payment of the fare or that which is accepted as an equivalent therefor. The prepayment of fare is not necessary to establish the relationship of passenger and carrier, although a carrier may demand prepayment of fare if persons enter his or her vehicle by his or her permission with the intention of being carried; in the absence of such a demand, an obligation to pay fare is implied on the part of the passenger, and the reciprocal obligation of carriage of the carrier arises upon the entry of the passenger.

(14) “Permit” means a written or electronic authorization issued by the department to motor carriers of passengers and nonconsensual towing companies for the purpose of providing services in accordance with the rules and guidelines of the department.

(15) “Person” means any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

(16) “Public highway” means every public street, road, highway, or thoroughfare of any kind in this state.

(17) “Vehicle” or “motor vehicle” means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner. (Code 1981, § 40-1-100, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 6/HB 323.)

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “the commissioner of public safety” for “the Commissioner of the Department of Public Safety” in paragraph (3). The second 2013 amendment, effective July 1, 2013, substituted “commissioner of public safety” for “Commissioner of the Department of Public Safety” in paragraph (3); added paragraphs (5) and (6); redesignated former paragraphs (5) through (11) as present paragraphs (7) through (13), respectively; rewrote paragraph (8); in paragraph (12), substituted “goods, or property or” for “goods, property, or” in subparagraph (12)(A), in the first sentence of division (12)(B)(v), substituted “vanpool” for “van pool” and inserted a comma after “place of

work”, and deleted a comma following “state government” near the beginning of division (12)(B)(vii); in paragraph (13), substituted a comma for a semicolon following “and carrier” near the middle of the second sentence; added paragraph (14); and redesignated former paragraphs (12) through (14) as present paragraphs (15) through (17), respectively. See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “Code Section 40-1-8” was substituted for “Code Section 60-1-8” at the end of division (10)(B)(ii) (now division (12)(B)(ii)) and “division (v) of this subparagraph” was substituted for “division (iv) of this subparagraph” near the end of division (10)(B)(vii) (now division (12)(B)(vii)).

**Editor’s notes.** — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

**40-1-101. Regulatory compliance inspections; regulation of business; requirements of motor carriers.**

(a) Notwithstanding any other provision of law to the contrary, all motor carriers operating on the public roads of this state shall be subject to the requirements of this part and shall be deemed to have given consent to regulatory compliance inspections.

(b) Unless expressly prohibited by federal law, the commissioner is vested with power to regulate the business of any person engaged in the transportation as a motor carrier of persons or property, either or both, for hire on any public highway of this state.

(c) The commissioner is authorized to employ and designate a person or persons as necessary to implement and carry out the functions contained in this part.

(d) All motor carriers shall:

(1) Obtain a certificate as required by this part;

(2) Maintain liability insurance as provided in the rules and regulations of the department;

(3) Act in compliance with Georgia’s workers’ compensation laws as provided in Chapter 9 of Title 34; and

(4) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1981, § 40-1-101, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Title 34; and” for “Title 34 of the Official Code of Georgia Annotated; and” in paragraph (d)(3).

**Editor’s notes.** — Ga. L. 2013, p. 141, § 40(4)/HB 79, which amended this Code section, purported to amend paragraph (3) of this Code section, but actually amended paragraph (d)(3) of this Code section.



**40-1-102. (For effective date, see note.) Certificate or permit prerequisite to operation; minimum insurance requirement.**

(a) No motor carrier of passengers or household goods shall, except as otherwise provided in this part, operate without first obtaining from the commissioner a certificate or permit.

(b) (For effective date, see note.) Before a motor carrier may enter into any contract for the transportation of passengers, the motor carrier shall provide to all parties to the agreement a copy of the motor carrier's proof of legally required minimum insurance coverage and a valid certification number demonstrating that the motor carrier is currently certified by the commissioner, the Federal Motor Carrier Safety Administration, or any other similarly required certifying agency. Any contract entered into in violation of this Code section shall be void and unenforceable. (Code 1981, § 40-1-102, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 756, § 1/HB 255; Ga. L. 2013, p. 838, § 7/HB 323.)

**Delayed effective date.** — Subsection (b), as set out above, becomes effective July 1, 2014. For version of subsection (b) in effect until July 1, 2014, see the second 2013 amendment note.

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “state revenue commissioner” for “Commissioner of Revenue” in the first sentence of subsection (b). See editor's note. The second 2013 amendment, effective July 1, 2014, deleted “the Commissioner of Revenue,” preceding “the Federal Motor Carrier” near the end of the first sentence of subsection (b). The third 2013 amendment, effective July 1, 2013, in subsection (a), deleted “or property” following “household goods” near the beginning and added “or permit”

at the end. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 141, § 54(f)/HB 79, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.”

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

**40-1-103. Application form for certificate; issuance to qualified applicant.**

(a) The department shall prescribe the form of the application for a motor carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its judgment, be necessary and may establish fees as part of such certificate process.



(b) A motor carrier certificate shall be issued to any qualified applicant, provided that such applicant is a motor carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle. (Code 1981, § 40-1-103, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-104. Revocation, alteration, or amendment of certificate or permit; suspension; out-of-service orders.**

(a) The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any motor carrier certificate or permit, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the certificate is not furnishing adequate service.

(b) The commissioner may, at any time, after reasonable attempt at notice, immediately suspend any motor carrier certificate or permit, if the commissioner finds such suspension necessary:

- (1) To protect life, health, or safety;
- (2) For the protection of consumers; or

(3) Based upon a finding that the carrier no longer meets the qualification or fitness requirements of Code Section 40-1-103 or 40-1-106.

Certificate holders affected by such suspension may appeal to the commissioner for review pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The commissioner may exercise his or her discretion to designate a hearing officer for such appeals.

(c) The commissioner, or his or her designated employees, may issue an out-of-service order or orders to a certificate or permit holder, pursuant to the provisions of this article or the department’s rules. (Code 1981, § 40-1-104, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 8/HB 323.)

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in sub-

section (b). The second 2013 amendment, effective July 1, 2013, inserted “or permit” throughout this Code section; substituted the present provisions of subsection (b) for

the former provisions, which read: "The commissioner may, at any time, after reasonable attempt at notice, immediately suspend any motor carrier certificate, if the commissioner finds such suspension necessary to protect life, health, or safety, or to protect the public and consumers. Certificate holders affected by such suspension may appeal to the commissioner for review pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commissioner may exercise his

or her discretion to designate a hearing officer for such appeals."; and added "or the department's rules" at the end of subsection (c). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

## JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-607 are included in the annotations for this Code section.

**No right to review revocation order of commission by writ of certiorari.** — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier to operate a passenger, baggage, and express service by motor vehicles over a specified route between certain named cities in this state, and, thereafter such certificate is revoked and canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier's failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 181 Ga. 75, 181 S.E. 834, answer conformed to, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-607).

**Authority of commission to trans-**

**fer truck operations.** — When a Class "B" certificate authorizing a holder to transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to "suspend, revoke, alter, or amend," and under former Code 1933, § 68-608, was authorized to transfer, was altered or amended and transferred, being limited to between all points within a 20 mile radius of Atlanta, there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in the metropolis of Atlanta. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-607).

**Control of pedestrians and motor vehicles within police power of municipality.** — Control of pedestrians and motor vehicles on municipal streets, including those on and around school grounds was a governmental function within the police power of the municipality. *Fletcher v. Russell*, 151 Ga. App. 229, 259 S.E.2d 212 (1979), rev'd on other grounds, 244 Ga. 854, 262 S.E.2d 138 (1979) (decided under former Code 1933, § 68-607).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-607, which was subsequently repealed but was suc-

ceeded by provisions in this Code section, are included in the annotations for this Code section.

**Former Code 1933, § 68-607 was**

**plain and unambiguous**, and hence not subject to legal interpretation; it clearly authorized the commission to revoke or amend a certificate if the carrier was not furnishing adequate service. The only question to be determined in such a case was whether or not the service was inadequate from any cause; it made no difference whether that inadequacy may have resulted from abandonment of other services by the applicant or any other carrier, or whether it arises from gradual population shifts. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

**Public convenience and necessity determinative factor concerning continuation of service.** — In determining whether a branch line should be discontinued, public convenience and necessity — not loss to the utility — when the operation as a whole is profitable, is the determinative factor, and the commission may consider the return from the entire system rather than just the branch line. Of course, under the guise of regulation the property of a carrier may not be taken by requiring it to furnish services or facilities not reasonably necessary to serve the public. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

**Effect of revocation of certificate by commission.** — When the commission, under former Code 1933, § 68-607, after notice and opportunity to be heard, and for reasonable cause, revoked and canceled a certificate of public convenience and necessity, such certificate became forever dead and the original holder thereof had no further privileges thereunder, and before the holder of such canceled and revoked certificate can again enjoy the privileges the holder formerly enjoyed under the certificate, the holder must first file a new application and it then became the duty of the commission to assign the application for a hearing so that the commission may determine that the public interest required such operations. 1945-47 Op. Att'y Gen. p. 403 (decided under former Code 1933, § 68-607).

**Duty of utility to furnish adequate service correlative of right to serve.** — Former Code 1933, § 68-607 was simply one expression of the principle which permeated all public utility regulations — the duty of the utility to furnish adequate service, which was a correlative of its right to serve. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 140 et seq., 155.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 206, 239, 240.

## 40-1-105. Transfer of certificate.

Any motor carrier certificate issued pursuant to this part may be transferred upon application to and approval by the commissioner, and not otherwise. (Code 1981, § 40-1-105, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

## JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-608 are included in the annotations for this Code section.

**Authority of commission to transfer truck operations.** — When a Class "B" certificate authorizing a holder to

transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to "suspend, revoke, alter, or amend," and under former Code 1933, § 68-608, was authorized to transfer was altered or amended and transferred, being



limited to between all points within a 20 mile radius of Atlanta there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in

the metropolis of Atlanta. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-608).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, § 135 et seq.

**C.J.S.** — 60 C.J.S., Motor Vehicles, § 175 et seq.

**ALR.** — Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 ALR2d 883.

### 40-1-106. Fitness of applicant; protesting certificate.

(a) The commissioner shall issue a motor carrier certificate to a person authorizing transportation as a motor carrier of passengers or household goods subject to the jurisdiction of the department if the commissioner finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with regulations of the department. Fitness encompasses three factors:

(1) The applicant's financial ability to perform the service it seeks to provide;

(2) The applicant's capability and willingness to perform properly and safely the proposed service; and

(3) The applicant's willingness to comply with the laws of Georgia and the rules and regulations of the department.

(b) The initial burden of making out a prima-facie case that an applicant is fit to provide such service rests with the applicant.

(c) Upon an applicant making out a prima-facie case as to the motor carrier's ability to provide the service, the burden shifts to protestant to show that the authority sought should not be granted.

(d) A protest of a motor carrier of passengers or of household goods to an application shall not be considered unless the protesting motor carrier:

(1) Possesses authority from the department to handle, in whole or in part, the authority which is being applied for and is willing and able to provide service and has performed service during the previous 12 month period or has actively in good faith solicited service during such period;

(2) Has pending before the department an application previously filed with the department for substantially the same authority; or



(3) Is granted by the commissioner leave to intervene upon a showing of other interests which in the discretion of the commissioner would warrant such a grant.

(e) The commissioner may issue a certificate without a hearing if the application is unopposed or unopposed. (Code 1981, § 40-1-106, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 9/HB 323.)

**The 2013 amendment,** effective July 1, 2013, deleted “or property” following “household goods” in the first sentence of subsection (a) and in the introductory paragraph of subsection (d); and substituted “application shall not” for “application will not” in subsection (d). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-609 and former O.C.G.A. § 46-7-7 are included in the annotations for this Code section.

**Principles generally accepted as elements of proof of public convenience and necessity.** — In determining whether the public interest requires the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not mandatory that each be proved before the commission was authorized to grant a certificate, this court recognized that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm’n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

**Provisions of this Code section are advisory.** — Each of the five specific subjects set forth in former Code 1933, § 68-609, which the law said the commission must consider, was intended for the guidance of the commission and to define the fields in which the commission should give consideration, but was merely advisory,

irrespective of what the evidence might disclose in respect to each of the five subjects. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

**Provisions not applicable to grant or denial of Class “B” certificates.** — Provisions of former Code 1933, § 68-609 declaring that the commission must consider whether existing transportation service of all kinds was adequate to meet the reasonable public needs, the volume of existing traffic over such route, and whether such traffic and that reasonably to be anticipated in the future can support already existing transportation agencies and also the applicant, the effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate would or may seriously impair essential existing public service, was advisory only and, irrespective of what the evidence might be upon the subjects there mentioned, the commission may grant or deny a Class “B” certificate without offending the law. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609); *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm’n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-609).

**The 1950 amendment to former Code 1933, § 68-609 was expressly limited to certificates over fixed routes,** and had no application to Class "B" certificates. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609); *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-609).

**Use of term "public."** — The use of the term "public" in former O.C.G.A. § 46-7-7 was intended to distinguish private carriage operations which require no certificate of public convenience and necessity. *Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n*, 194 Ga. App. 340, 390 S.E.2d 283, cert. vacated, 260 Ga. 470, 397 S.E.2d 709 (1990) (decided under former O.C.G.A. § 46-7-7).

**Primary concern is public interest and welfare and grant of certificate is discretionary.** — In the hearing on an application for a certificate, the commission merely conducts an investigation of fact, authorized by statute, in the determination of which the primary concern is the public interest and welfare. Whether or not the commission grants an application for a certificate is purely a matter of discretion and not one of absolute right. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

**Five factors enumerated to be considered by commission.** — Former O.C.G.A. § 46-7-7 enumerated five factors, among others, that the Public Service Commission must consider in determining whether a certificate of public convenience and necessity should be granted. *RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 165 Ga. App. 539, 301 S.E.2d 896 (1983) (decided under former O.C.G.A. § 46-7-7).

**Public interest comprehends much more than five elements contained in this section.** — Both former Code 1933, § 68-504, which related to "motor contract carriers", and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public convenience and necessity from the

commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements, comprehends much more. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

**No error to refuse injunction where evidence supports discretion of commission.** — When it appears that the commission had evidence authorizing the commission in the exercise of the commission's discretion to issue the certificate applied for, the trial judge did not err in refusing to enjoin the commission or the applicant. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

**Commission free to exercise its judgment to grant or deny applications.** — Commission, as respects Class "B" certificates, is free to exercise the commission's own judgment and to grant or deny the applications for such certificates. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

**Error for trial judge to enjoin certificate holder from operating.** — It was error for the trial judge to enjoin the holder of a Class "B" certificate from operating thereunder upon the theory that the evidence failed to show inadequacy of existing transportation service. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

**No interference with order of commission unless showing of unreasonableness.** — Neither the trial court, nor a court on review, will substitute the court's own discretion and judgment for that of the commission when the commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and will not interfere with a valid order of the commission unless it be clearly shown that the order is unreasonable, arbitrary, or capricious. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

**Commission's order supported by some evidence will not be overturned on appeal.** — When the record reflects that the Public Service Commission's order denying the requested certificates was supported by some evidence and was not unreasonable, arbitrary, or capricious, the Court of Appeals will not substitute the court's own decision for that of the commission. *RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 165 Ga. App. 539, 301 S.E.2d 896 (1983) (decided under former O.C.G.A. § 46-7-7).

**Applicability of decisions of Supreme Court construing comparable provisions.** — Provisions of former Code 1933, § 68-504 were in all respects the same as the provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609, were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

**So long as certificate remained unrevoked, commission could authorize certificate's transfer.** — Question of public convenience and necessity having been determined by the commission at the time the certificate was issued, the commission would not be required on an application for transfer to consider that question again before granting a transfer of the certificate. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

**When existing certificate holder not entitled to notice and opportunity required by this section.** — When the proposed route was not the same as that used by a certificate holder, that company was not entitled to notice and an opportunity to remedy inadequate service

as required by former Code 1933, § 68-609. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

**Existing certificate holder must have opportunity to improve service.** — Competing motor carrier certificate cannot be granted until after the existing certificate holder has had an opportunity to improve service. *Statesboro Tel. Co. v. Georgia Pub. Serv. Comm'n*, 235 Ga. 179, 219 S.E.2d 127 (1975) (decided under former Code 1933, § 68-609).

**"Route" defined.** — Word "route," as used in former Code 1933, § 68-609, meant the particular highway or road, or series of highways or roads, over which a carrier is authorized by the commission to operate the carrier's vehicles between terminal points. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

**"Route" and "highway" distinguished.** — A "route" is a direction of travel from one place to another. It may be over one or more named or numbered highways or paths. A "highway" is a road for travel, and may be a portion of one or more different routes. When numbered or named as a highway running from one point to another, it becomes a route. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

**When two routes can be same route.** — Two routes cannot be the same unless the highways, the certificates of convenience and necessity, and the terminal points are the same. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

**Certificate amendment based on need expressed by single shipper.** — Certificate amendment, which was sought on the basis of a need expressed by a single shipper, was properly granted since the evidence established that the proposed service would serve a useful public purpose and be responsive to a public demand or need. *Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n*, 194 Ga. App. 340, 390 S.E.2d 283, cert.



vacated, 260 Ga. 470, 397 S.E.2d 709 (1990) (decided under former O.C.G.A. § 46-7-7).

**Cited in Georgia Pub. Serv. Comm'n v. Smith Transf. Co.**, 207 Ga. 658, 63 S.E.2d 653 (1951).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, § 130 et seq.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 174, 187 et seq., 192 et seq.

**ALR.** — State regulation of carriers by motor vehicle as affected by interstate

commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 ALR 957.

### 40-1-107. Information in application.

The commissioner shall adopt rules prescribing the manner and form in which motor carriers of passengers or household goods or property shall apply for certificates required by this part. Such rules shall require that the application be in writing, under oath, and that the application:

(1) Contains full information concerning the applicant's financial condition, the equipment proposed to be used, including the size, weight, and capacity of each vehicle to be used, and other physical property of the applicant;

(2) States the complete route or routes over which the applicant desires to operate and the proposed time schedule of the operation; and

(3) Contains any such other or additional information as the commissioner may order or require. (Code 1981, § 40-1-107, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### 40-1-108. Transportation of persons under age 21 drinking alcohol.

Any motor carrier subject to the jurisdiction of the commissioner that transports passengers shall comply with the provisions of Code Section 3-3-23, concerning consumption of alcoholic beverages by persons under the age of 21. The commissioner shall provide to all motor carriers, at the time of registration or renewal of a certificate, an informational packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the motor carrier. (Code 1981, § 40-1-108, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### 40-1-109. Fees upon initial application.

The commissioner shall collect the following one-time fees upon initial application of a motor carrier pursuant to this part:



(1) A fee of \$75.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six motor vehicles;

(2) A fee of \$150.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 motor vehicles;

(3) A fee of \$200.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 motor vehicles;

(4) A fee of \$75.00 to accompany each application for transfer of a motor carrier certificate; and

(5) A fee of \$50.00 to accompany each application for intrastate temporary emergency authority under Code Section 40-1-114. (Code 1981, § 40-1-109, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “Code Section 40-1-114” was substituted for “Code Section 40-1-104” at the end of paragraph (5).

#### 40-1-110. Hearing and notice of pending application.

The commissioner, upon the filing of an application for a motor carrier certificate, shall give notice of the pending application by posting the same on the department’s official website for ten days. If a protest is filed with the department, the commissioner shall fix a time and place for a hearing. If no protest is filed with the department or if the protest is subsequently withdrawn, the commissioner may issue the motor carrier certificate without a hearing. (Code 1981, § 40-1-110, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 10/HB 323.)

**The 2013 amendment,** effective July 1, 2013, substituted “give notice of the pending application by posting the same on the department’s official website for ten days” for “fix a time and place for hearing thereon and shall, at least ten days before the hearing, give notice thereof by advertising the same at the expense of the applicant in a newspaper in Atlanta, in which sheriffs’ notices are published” in

the first sentence, and added the second sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

#### 40-1-111. Limitation upon reapplication for denied applicants.

When an application for a motor carrier certificate under this part has been in whole or in part denied by the commissioner, or has been granted by the commissioner, and the order of the commissioner

granting same has been quashed or set aside by a court of competent jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the department within three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order. (Code 1981, § 40-1-111, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-112. Insurance of motor carriers.**

(a) No motor carrier of household goods or property or passengers shall be issued a motor carrier certificate unless there is filed with the department a certificate of insurance for such applicant or holder on forms prescribed by the commissioner evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state, which policy must provide for the protection, in case of passenger vehicles, of passengers and the public against injury proximately caused by the negligence of such motor carrier, its servants, or its agents; and, in the case of vehicles transporting household goods, to secure the owner or person entitled to recover against loss or damage to such household goods for which the motor common carrier may be legally liable. The department shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. The failure to file any form required by the department shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer.

(b) The department shall have power to permit self-insurance, in lieu of a policy of indemnity insurance, whenever in its opinion the financial ability of the motor carrier so warrants.

(c) It shall be permissible under this part for any person having a cause of action arising under this part to join in the same action the motor carrier and the insurance carrier, whether arising in tort or contract. (Code 1981, § 40-1-112, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

GENERAL CONSIDERATION

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2. PROOF REQUIREMENTS

3. JOINDER ISSUES

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BOND OR INDEMNITY INSURANCE

INTERSTATE CARRIERS

### General Consideration

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, § 68-612, and former O.C.G.A. §§ 46-7-12 and 46-7-58 are included in the annotations for this Code section.

**Purpose of Code section.** — Former Code 1933, § 68-612 did not have as the statute's purpose protecting the insured from loss, but in the protection of the public against carrier-inflicted injuries. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

**Constitutionality.** — Last sentence in subsection (e) (now subsection (c)) of former Code 1933, § 68-612 considered with the statute's context, was not a special law, but a general law applicable alike to all motor carriers and indemnity-insurance companies filing bonds and insurance policies under provisions of the act in all parts of the state, and being of such character was not violative of Ga. Const. 1976, Art. I, Sec. II, Para. VII, (Ga. Const. 1983, Art. I, Sec. II, Para. X) inhibiting passage of special laws for which provision has been made by an existing general law. *Lloyds Am. v. Brown*, 187 Ga. 240, 200 S.E. 292 (1938) (decided under former Code 1933, § 68-612).

Former Code 1933, § 68-612 was not void as violative of Ga. Const. 1976, Art. I, Sec. II, Para. III (Ga. Const. 1983, Art. I, Sec. II, Para. IV) or U.S. Const., Art. XIV, Sec. 1. *Lloyds Am. v. Brown*, 187 Ga. 240, 200 S.E. 292 (1938) (decided under former Code 1933, § 68-612).

Joinder of the motor carrier and the carrier's insurer or surety in the same action does not violate the equal protection or due process clauses of the Georgia Constitution. *Grissom v. Gleason*, 262 Ga. 374, 418 S.E.2d 27 (1992) (decided under former O.C.G.A. § 46-7-12).

Joinder provision did not violate the equal protection clause of the Constitution of the State of Georgia of 1983. *Edwards v. Kessler*, 262 Ga. 346, 419 S.E.2d 21 (1992) (decided under former O.C.G.A. § 46-7-58).

Any issue as to the constitutionality of former O.C.G.A. § 46-7-12 was in the exclusive jurisdiction of the Supreme

Court on appeal and, in any case, could not be properly raised on appeal when the trial court did not expressly consider and rule upon the issue. *Wright v. Transus, Inc.*, 209 Ga. App. 771, 434 S.E.2d 786 (1993) (decided under former O.C.G.A. § 46-7-12).

**Section must be strictly construed.** — Former O.C.G.A. § 46-7-12 was in derogation of the common law and must be strictly construed. *National Indem. Co. v. Tatum*, 193 Ga. App. 698, 388 S.E.2d 896 (1989) (decided under former O.C.G.A. § 46-7-12).

**Duty to indemnify motoring public for carrier's negligence.** — When an insurer purports to issue coverage to an insured which the insurer knows is a motor carrier, the insurer assumes responsibility to indemnify the motoring public for injuries sustained by virtue of the carrier's negligence in at least the minimum amount statutorily required under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-1 et seq., and up to the policy limits, notwithstanding any provisions in the insurance policy to the contrary; any negative consequences arising from noncompliance with the Act by the insured motor carrier or the insurer should be suffered by one or both of the noncompliant parties rather than by the innocent motoring public. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12).

**Insurer's liability for unsatisfied judgment against insured.** — An insurer is absolutely liable for any unsatisfied judgment which may be obtained against its insured whether or not its insured breached the conditions of the policy. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

**Carrier's liability for operation by lessee of truck with trailer removed.** — Public policy independently intended motor carrier to bear full responsibility to public for the operation by its lessee of a "bobtailed" truck (tractor with trailer removed) which the lessee was driving on the lessee's way home. *Nationwide Mut. Ins. Co. v. Holbrooks*, 187 Ga. App. 706,



371 S.E.2d 252 (1988) (decided under former O.C.G.A. § 46-7-12).

**Preemption by federal law.** — Former O.C.G.A. § 46-7-12 was not preempted by 49 U.S.C. § 10927 which provided for payment of a claim by an insurer after a final judgment had been recovered against the motor carrier the insurer insures. *Watkins v. H.O. Croley Granary*, 555 F. Supp. 458 (N.D. Ga. 1982) (decided under former O.C.G.A. § 46-7-12).

**No direct action against insurer of exempt vehicle.** — When an insured commercial motor vehicle was acting as a timber hauler at the time of an accident, it was not within the definition of a common carrier or contract carrier, and no direct action could be maintained against an insurer because the insurer was outside the ambit of former O.C.G.A. § 46-7-12. *Smith v. Southern Gen. Ins. Co.*, 222 Ga. App. 582, 474 S.E.2d 745 (1996) (decided under former O.C.G.A. § 46-7-12).

Since former O.C.G.A. § 46-1-1 (9)(C)(xiv), as it existed prior to the 2002 amendment, exempted dump trucks from the definition of motor contract or common carrier, the insurer for a dump truck that was involved in a motor vehicle collision could not be subjected to a direct action. The insurer was properly dismissed from a counterclaim against the driver in the driver's personal injury action against the other driver. *Morgan Driveaway, Inc. v. Canal Ins. Co.*, 266 Ga. App. 765, 598 S.E.2d 38 (2004) (decided under former O.C.G.A. § 46-7-12).

**"Actionable injury" defined.** — "Actionable injury" means an injury to a person who could sue the carrier and obtain a judgment for the injuries sustained. Such definition by its nature broadly includes all third-parties injured by the negligence of the motor carrier, or by the negligence of its servants, and necessarily excludes employees of the carrier who could not sue the employer. Likewise, if the motor carrier could not be liable for a failure of agency of a particular employee in the accident in question, the insurance company may be protected thereby. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S.

946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Under the laws of this state, a master is not liable for damages for the negligence of a fellow servant generally, and if a case is such that a master is so liable at common law generally, the master would not be subject to action and judgment if the carrier and employee came under the provisions of the workers' compensation law (see O.C.G.A. Ch. 9, T. 34). *Combs v. Carolina Cas. Ins. Co.*, 90 Ga. App. 90, 82 S.E.2d 32 (1954) (decided under former Code 1933, § 68-612).

**No "actionable injury" against motor carrier for which insurer could be held liable.** — See *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-12).

**Injury refers to person and loss refers to baggage or property.** — In former Code 1933, § 68-612, the word "injury" seems to refer to the person, and the word "loss" to baggage or property. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933) (decided under former Code 1933, § 68-612); *LaHatte v. Walton*, 53 Ga. App. 6, 184 S.E. 742 (1936) (decided under former Code 1933, § 68-612).

**Accident on highways not prerequisite to cause of action.** — Mere reference to use of Georgia highways in some sections of the Code does not mean that a person has a cause of action under former O.C.G.A. § 46-7-12 only if an injury occurs on Georgia highways. *Johnson v. Woodward*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

**Until proper notice given to commission, insurance policy effective only for benefit of public.** — Commission rules can only provide that until proper notice is given to the commission, an insurance policy is effective for the benefit of the public, not the insured in cases when the policy between the insured and the insurer has lapsed. *Smith v. National Union Fire Ins. Co.*, 127 Ga. App. 752, 195 S.E.2d 205 (1972) (decided under former Code 1933, § 68-612).



**Legislature's purpose in giving commission right to fix bond amount.**

— Legislature's purpose to obviate necessity for double litigation by giving commission right to fix the amount of the bond and to prescribe provision thereof. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933) (decided under former Code 1933, § 68-612).

**Extent of coverage under policy issued pursuant to this section.** — Provision in a policy issued pursuant to the provisions of former Code 1933, § 68-612, that the policy covered the operation of automobiles and motor vehicles which were used only for the transportation of passengers for compensation purposes and operated on schedule over routes authorized by the commission covered motor vehicles not only when actually engaged in the transportation of passengers over scheduled routes, but covered such motor vehicles when used for any purpose or engaged in any act essential to the operation of the motor vehicle as a motor common carrier in the transportation of passengers for compensation over scheduled routes. *American Fid. & Cas. Co. v. McWilliams*, 55 Ga. App. 658, 191 S.E. 191 (1937) (decided under former Code 1933, § 68-612).

**Evidence of policy limit.** — Trial court did not abuse the court's discretion in denying appellees' motion for mistrial when counsel incorrectly asked witness about policy limit but before witness could answer opposing counsel objected; no evidence of the insurance policy limit was introduced by the unanswered question, and the trial court gave prompt curative instructions. *Ashley v. Goss Bros. Trucking*, 269 Ga. 449, 499 S.E.2d 638 (1998) (decided under former O.C.G.A. § 46-7-12).

**Failure to list vehicle limited liability.** — When the truck involved in a collision was not listed as a covered auto under an insurance policy issued by the insurer that filed a certificate of insurance for a carrier, the insurer's liability was limited to the minimum compulsory liability limits as established pursuant to O.C.G.A. § 46-7-12, not the maximum limits of the policy. *Kinard v. National Indem. Co.*, 225 Ga. App. 176, 483 S.E.2d

664 (1997), *aff'd sub nom.*, *Ross v. Stephens*, 269 Ga. 266, 496 S.E.2d 705 (1998) (decided under former O.C.G.A. § 46-7-12).

**Former Code 1933, § 68-612 was designed to protect strangers to motor carriers,** not those who, although receiving paychecks from a lessor are involved in the operations of the carrier as if they were employees. *White v. Excalibur Ins. Co.*, 599 F.2d 50 (5th Cir.), *cert. denied*, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377 (1979) (decided under former Code 1933, § 68-612).

**Personnel deemed statutory employees to ensure carrier's responsibility for public safety.** — Because the carrier now has both a legal right and duty to control vehicles operated for the carrier's benefit, the employees of the vehicle-lessor are deemed statutory employees of the lessee-carrier to the extent necessary to insure the carrier's responsibility for the public safety just as if the lessee-carrier were the owner of the vehicles. *White v. Excalibur Ins. Co.*, 599 F.2d 50 (5th Cir.), *cert. denied*, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377 (1979) (decided under former Code 1933, § 68-612).

**Contractual release and indemnity provision.** — Application of the release and indemnity provision in an independent contractor agreement between a first driver and a common carrier did not violate the public policy of Georgia as it was not the purpose of former O.C.G.A. § 46-7-12, which was similar to 49 C.F.R. § 387.15, to make an insurer for a common carrier liable when a judgment could not be recovered against the carrier itself; based on the first driver's contractual relationship with the common carrier, the first driver was not a member of the general public meant to be protected by former § 46-7-12. *Coleman v. B-H Transfer Co.*, 284 Ga. 624, 669 S.E.2d 141 (2008) (decided under former O.C.G.A. § 46-7-12).

**Insurer subject to direct action by third parties injured by virtue of motor carrier's negligence.** — Court of appeals erred in affirming an order granting an insurer's motion for summary judgment in the insurer's action seeking a

declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver's employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer's status as a motor carrier and of the insurer's need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any provisions in the insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former Code 1933, § 68-612).

**Nature of liability of carrier and insurer.** — Liability against the insurance carrier is *ex contractu* and the liability against (the insured) is *ex delicto*. The insurer and the carrier are neither joint tort-feasors nor joint contractors. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

**Permissibility of joinder of tort and contract actions.** — Former Code 1933, § 68-612 allowed the joinder of a tort action against a carrier with a contract action against the carrier's insurer-in-lieu-of-bond. The only condition precedent to the joinder of the latter was that there be a viable action against the former. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

**Independent action on policy itself.** — An action on the policy itself against the insurer of a motor carrier was cogni-

zable as an independent suit without joinder of the motor carrier. Such a suit was an independent *ex contractu* action on the policy itself and was nonancillary to the *ex delicto* action against the motor carrier. *Employers Ins. v. Dawson*, 194 Ga. App. 247, 390 S.E.2d 261, cert. denied, 194 Ga. App. 911, 390 S.E.2d 261 (1990) (decided under former O.C.G.A. § 46-7-12).

**Direct action not authorized when accident occurred outside state.** — Former O.C.G.A. § 46-7-12 did not authorize direct causes of action when the accident giving rise to the suit occurs outside the state of Georgia. *National Union Fire Ins. Co. v. Marty*, 197 Ga. App. 642, 399 S.E.2d 260 (1990) (decided under former O.C.G.A. § 46-7-12).

Even if underlying acts of negligence occur in Georgia, the purposes of former O.C.G.A. § 46-7-12 and the state's interest in ensuring and expediting compensation of injured parties were not implicated when the accident does not occur in the state. *Liberty Mut. Ins. Co. v. Dehart*, 206 Ga. App. 858, 426 S.E.2d 592 (1992) (decided under former O.C.G.A. § 46-7-12).

**Permissibility of direct action against insurer of interstate carrier.**

— When a motor common carrier held certificates of public convenience and necessity from both the Interstate Commerce Commission for operation as an interstate carrier and the Georgia Public Service Commission as an intrastate carrier, an action for damages arising from an accident occurring in the carrier's intrastate operation and proceeding upon the insurance policy filed with the Georgia Public Service Commission could be brought against the motor carrier's insurer in the first instance under former Code 1933, § 68-612. The requirement of 49 U.S.C. § 315 that final judgment first be obtained against the carrier was not applicable. *Tucker v. Casualty Reciprocal Exch.*, 40 F. Supp. 383 (N.D. Ga. 1941) (decided under former O.C.G.A. § 46-7-12).

**Amendment of complaint permissible to add liability insurer as defendant.** — With leave of the court, a complaint can be amended to bring in an additional defendant, a liability insurer for a defendant motor carrier when coun-

sel did not learn that the defendant was a common carrier and required to furnish adequate security until after the discovery was commenced. *Crews v. Blake*, 52 F.R.D. 106 (S.D. Ga. 1971) (decided under former Code 1933, § 68-612).

**Effect on insurer of improper service on carrier.** — Because the action against the insurance carrier was based on a contract with the public as the third party beneficiary of the contract and because subsection (e) of former O.C.G.A. § 46-7-12 authorized the joinder of the motor carrier and the insurer in the same action, it was error to dismiss the action against the insurer on the basis that the motor carrier was not properly served. *Ellerbee v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-12).

**Burden of proving vehicle exempt from definition of “motor contract carrier”.** — On the question of whether a carrier was a “motor contract carrier” under O.C.G.A. § 46-1-1(8) (now paragraph (7)) such that the carrier’s insurer was subject to the joinder provisions of subsection (e) of former O.C.G.A. § 46-7-12, the burden of proof was on the truck owner to show that the owner’s truck came within the exemption from the definition of “motor contract carrier” in § 46-1-1(8)(c) (now subparagraph (7)(A)) and there was no burden on plaintiffs to prove that the truck was not within the exemption. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-12).

**Exemption from motor contract carrier status must be established prior to liability.** — If at any time up to and including the time of the collision with plaintiff, any of the requirements for the exemption from motor contract carrier status under former § 46-1-1(8)(c) had not been met, that motor vehicle would not have been engaged “exclusively” in the transportation of exempted products and would not qualify the owner for exemption from application of former O.C.G.A. § 46-7-12. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-12).

**Essential elements for allowing direct action against insurer.** — Proof of filing of the insurance policy and approval by the public service commission was essential to allowing a direct action against the insurer of a motor contract carrier. *Progressive Cas. Ins. Co. v. Scott*, 188 Ga. App. 75, 371 S.E.2d 881 (1988) (decided under former O.C.G.A. § 46-7-12); *Kennedy v. Georgia-Carolina Refuse & Waste Co.*, 739 F. Supp. 604 (S.D. Ga. 1990) (decided under former O.C.G.A. § 46-7-12).

Step van used exclusively by the van’s owner to transport its own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in O.C.G.A. § 46-7-12. *National Union Fire Ins. Co. v. Sorrow*, 202 Ga. App. 517, 414 S.E.2d 731 (1992) (decided under former O.C.G.A. § 46-7-12).

**Cited** in *A.G. Boone Co. v. Owens*, 54 Ga. App. 379, 187 S.E. 899 (1936); *Hodges v. Ocean Accident & Guar. Corp.*, 66 Ga. App. 431, 18 S.E.2d 28 (1941); *Gallahar v. George A. Rheman Co.*, 50 F. Supp. 655 (S.D. Ga. 1943); *American Fid. & Cas. Co. v. Farmer*, 77 Ga. App. 166, 48 S.E.2d 122 (1948); *Arnold v. Walton*, 205 Ga. 606, 54 S.E.2d 424 (1949); *Garden City Cab Co. v. Ransom*, 86 Ga. App. 247, 71 S.E.2d 443 (1952); *Cotton States Mut. Ins. Co. v. Keefe*, 215 Ga. 830, 113 S.E.2d 774 (1960); *Reeves v. South Am. Managers, Inc.*, 110 Ga. App. 49, 137 S.E.2d 700 (1964); *Wolverine Ins. Co. v. Strickland*, 116 Ga. App. 62, 156 S.E.2d 497 (1967); *Barber v. Canal Ins. Co.*, 119 Ga. App. 738, 168 S.E.2d 868 (1969); *Schaefer v. Mayor of Athens*, 120 Ga. App. 301, 170 S.E.2d 339 (1969); *St. Paul Fire & Marine Ins. Co. v. Mose Gordon Constr. Co.*, 121 Ga. App. 33, 172 S.E.2d 459 (1970); *Isom v. Schettino*, 129 Ga. App. 73, 199 S.E.2d 89 (1973); *Seaboard Coast Line R.R. v. Freight Delivery Serv., Inc.*, 133 Ga. App. 92, 210 S.E.2d 42 (1974); *Dove v. National Freight, Inc.*, 138 Ga. App. 144, 225 S.E.2d 477 (1976); *Mercer v. Braswell*, 140 Ga. App. 624, 231 S.E.2d 431 (1976); *Homick v. American*



Cas. Co., 209 Ga. App. 156, 433 S.E.2d 318 (1993); *McAdams v. United States Fire Ins. Co.*, 234 Ga. App. 324, 506 S.E.2d 679 (1998); *Raintree Trucking Co. v. First Am. Ins. Co.*, 245 Ga. App. 305, 534 S.E.2d 459 (2000); *Jackson v. Sluder*, 256 Ga. App. 812, 569 S.E.2d 893 (2002); *Cowart v. Widener*, 296 Ga. App. 712, 675 S.E.2d 591 (2009).

## Pleadings and Practice

### 1. In General

**Section established independent cause of action against insurer.** — In addition to a suit in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

**Distinction between liability of common carrier and obligation of insurer to injured.** — Common carrier that negligently injures a person, and the insurance company that issues the carrier an indemnity policy under the provisions of former Code 1933, § 68-612, were neither joint tortfeasors nor joint contractors, so as to bring them within the provisions of Ga. Const. 1976, Art. VI, Sec. XIV, Para. IV, (Ga. Const. 1983, Art. VI, Sec. II, Para. IV) permitting suit to be instituted against joint obligors or joint tortfeasors in the county of either, since the liability of the carrier to the injured person arose from a tort in the commission of which the insurance company was not concerned, while the insurance company's obligation to pay the damages caused by the carrier's negligence was a contractual duty not assumed by the carrier. *Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co.*, 92 Ga. App. 726, 89 S.E.2d 831 (1955) (decided under former Code 1933, § 68-612).

**Venue in action when party is natural person engaged in business of common carrier.** — While joinder of the carrier and insurance company in the same action was permitted by former

Code 1933, § 68-612, a natural person engaged in the business of a common carrier cannot be joined with the insurance company in an action instituted elsewhere than in the county where the carrier resides. *Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co.*, 92 Ga. App. 726, 89 S.E.2d 831 (1955) (decided under former Code 1933, § 68-612).

**Statute of limitations commenced to run at time of commission of alleged tort.** — In an action based upon the insurance contract, the statute of limitation commenced running at the time of the commission of the alleged tort, which was the basis of the insurer's contractual liability. *Addington v. Ohio S. Express, Inc.*, 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

**Not a special statutory proceeding.** — Former Code 1933, § 68-612 was not a special statutory proceeding excluded from the purview of O.C.G.A. Ch. 11, T. 9. *Continental Ins. Co. v. Mercer*, 130 Ga. App. 339, 203 S.E.2d 297 (1973) (decided under former Code 1933, § 68-612).

**Effect on insurer of improper service on carrier.** — Fact that an interstate motor carrier had not been properly served did not mandate that the carrier's insurer also be dismissed. *Ellerbee v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-12).

### 2. Proof Requirements

**Coverage must be proved in actions when insurer is joined;** if not, no verdict and judgment can be sustained against the insurer. *St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co.*, 116 Ga. App. 606, 158 S.E.2d 476 (1967) (decided under former Code 1933, § 68-612).

**Sustaining of actionable injury is condition precedent to action on policy.** — Sustaining of actionable injury was, under former O.C.G.A. § 46-7-12, the only condition precedent to an action on the policy. When actionable injury was alleged in an action on the policy, the terms of the statute were complied with, and the petitioner upon proper proof of the injury is entitled to recover on the policy.



The cause of action was not on the tort, but on the contract by alleging the occurrence of the condition precedent required by the statute, which statute was an integral part of the contract of insurance. *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 2d 24 (1936) (decided under former Code 1933, § 68-612); *Addington v. Ohio S. Express, Inc.*, 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

**Proof required for direct action against insurer.** — Proof that a policy was filed and approved by the Public Service Commission was required in order to maintain a direct action against the insurer of a contract motor carrier. *Canal Ins. Co. v. Farmer*, 222 Ga. App. 539, 474 S.E.2d 732 (1996) (decided under former O.C.G.A. § 46-7-12).

In a case arising from an automobile crash, while former O.C.G.A. § 46-7-12 provided a direct action against an insurer of a common carrier, and served as a sort of surety bond to protect the public, a plaintiff's claim against the insurer of the other driver's employer failed because the plaintiff did not plead that the employer was a common carrier or that the insurer's policy had been filed with, much less approved by, the Public Service Commission. *Lee v. Huttig Bldg. Prods.*, No. 1:04-CV-195 (WLS), 2005 U.S. Dist. LEXIS 22364 (M.D. Ga. Sept. 16, 2005) (decided under former O.C.G.A. § 46-7-12).

**Applicability and interstate commerce.** — Direct action statute did not apply to plaintiff's cause of action because the action arose out of interstate commerce, and even if the statute had applied, the plaintiff would not have been able to prove that the Public Service Commission had approved the insurance policy, a prerequisite to a direct action under former O.C.G.A. § 46-7-12. *Dundee Mills, Inc. v. John Deere Ins. Co.*, 248 Ga. App. 39, 545 S.E.2d 604 (2001) (decided under former O.C.G.A. § 46-7-12).

In an action against the driver of a tractor-trailer and the driver's insurer, when neither a bond nor an insurance policy had been filed with the commission and the driver was not registered with the commission as a motor carrier, no direct

action against the insurer was allowable. *Lockhart v. Southern Gen. Ins. Co.*, 231 Ga. App. 311, 498 S.E.2d 161 (1998) (decided under former O.C.G.A. § 46-7-12).

**For recovery, necessary to show injury was caused by negligence of principal or agents.** — In order to authorize a recovery in an action brought on a bond or insurance policy it would be necessary to show that the injury complained of was caused by the negligence of the principal in the bond, the principal's agents, or representatives, in the operation of the described automobile. *Zachry v. City Council*, 78 Ga. App. 746, 52 S.E.2d 339 (1949) (decided under former Code 1933, § 68-612).

**Mere proof of liability coverage insufficient.** — Since former O.C.G.A. § 46-7-12 created a direct pre-judgment cause of action in contract against an insurer and did not merely provide a statutory exception to the procedural prohibition against joinder of a liability insurer as a party defendant in a tort action against its insured, it follows that mere proof that the allegedly negligent tortfeasor had liability coverage was not necessarily sufficient proof of the direct cause of action against the insurer itself. Such proof would fail to show that the injured party was a third-party beneficiary who had a direct pre-judgment cause of action in contract against the insurer itself. *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 359 S.E.2d 351 (1987), cert. denied, 183 Ga. App. 906, 359 S.E.2d 351 (1988) (decided under former O.C.G.A. § 46-7-12).

**Submission of policy limits to the jury.** — Since the plaintiff in a motor collision suit against a common carrier and the carrier's insurer can prove the limits of coverage so as to sustain a judgment against the insurer without submitting the policy limits to the jury and since submission of the policy limits to the jury tended to prejudice the defendants, the Supreme Court of Georgia concluded that the objection of a defendant common carrier and the carrier's insurer to the submission of policy limits to the jury should have been sustained. Unless it was necessary, the amount of insurance coverage should not be placed before the jury. Car-

olina Cas. Ins. Co. v. Davalos, 246 Ga. 746, 272 S.E.2d 702 (1980) (decided under former Code 1933, § 68-612).

**Status as “carrier.”** — Step van used exclusively by the van’s owner to transport the owner’s own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people, was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in former O.C.G.A. §§ 46-7-12 and 46-7-58. National Union Fire Ins. Co. v. Sorrow, 202 Ga. App. 517, 414 S.E.2d 731 (1992) (decided under former O.C.G.A. § 46-7-12).

**Prescribed forms.** — Summary judgment for the insurer was reversed, and the amended version of O.C.G.A. § 46-7-12(c), requiring a common carrier to file prescribed forms evidencing insurance, was applied retroactively, permitting a direct action against the insurer by an injured party for injuries suffered in a motor vehicle accident, despite the failure to file the prescribed form evidencing the insurance policy. Devore v. Liberty Mut. Ins. Co., 257 Ga. App. 7, 570 S.E.2d 87 (2002) (decided under former O.C.G.A. § 46-7-12).

### 3. Joinder Issues

**Joint action against carrier and insurer permissible.** — Person who had been injured by the alleged negligence of the driver of a motor common carrier truck can maintain a joint action at law against the motor common carrier and the indemnity company from which such motor common carrier had procured a policy of indemnity insurance, and such action was not controlled by the general rule that an action ex delicto cannot be joined with an action ex contractu. LaHatte v. Walton, 53 Ga. App. 6, 184 S.E. 742 (1936) (decided under Ga. L. 1929, pp. 293, 297, § 5).

Former Code 1933, § 68-612 permitted a motor carrier and the carrier’s insurance company to be joined in the same action as defendants. Har-Pen Truck Lines v. Mills, 378 F.2d 705 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

#### **Responsibility of insurance carrier.**

— Insurer was neither a joint tortfeasor nor responsible for the carrier’s negligent conduct under a theory of vicarious liability; consequently, plaintiff’s attempts to impute the carrier’s negligence to the insurer were improper and prejudicial, as was the argument that the jury should base the jury’s award on the insurer’s treatment of plaintiff independent of the collision. Myrick v. Stephanos, 220 Ga. App. 520, 472 S.E.2d 431 (1996) (decided under former O.C.G.A. § 46-7-12).

**Joinder not required.** — While former O.C.G.A. § 46-7-12 permitted joinder of the carrier and the insurer in a suit by a member of the public who was injured by the negligence of a carrier, it did not require it. Griffin v. Johnson, 157 Ga. App. 657, 278 S.E.2d 422 (1981) (decided under former O.C.G.A. § 46-7-12).

**Purpose of joinder.** — Erroneous dismissal of motor carrier’s liability insurer did not entitle accident victim to a new trial on liability and damages; provision allowing joinder of insurer was not intended to enhance the value of a third party’s claim for damages; plaintiff had no separate claim against a motor carrier’s insurer; the purpose of permitting joinder of the insurer in a claim against the carrier was to further the policy of the former Motor Carrier Act to protect the public against injuries caused by the carrier’s negligence. Andrews v. Yellow Freight Sys., 262 Ga. 476, 421 S.E.2d 712 (1992) (decided under former O.C.G.A. § 46-7-12).

**Relationship to other statutes.** — Insurer failed to meet the insurer’s burden of showing that a company the insurer insured was not a “motor common carrier” or a “motor contract carrier” under O.C.G.A. § 46-1-1(9)(C) when a tractor-trailer the company owned was involved in an accident because, although the insurer showed that the tractor-trailer was being used to haul timber products when the accident occurred, the insurer did not show that the tractor-trailer was used exclusively for that purpose, and the trial court erred when the court granted the insurer’s motion for summary judgment on plaintiff’s personal injury claims. Jarrard v. Clarendon Nat’l Ins. Co., 267

Ga. App. 594, 600 S.E.2d 689 (2004) (decided under former O.C.G.A. § 46-7-12).

**Joinder of insurer permitted but no limitation on amount of damages pled.** — Former Code 1933, § 68-612 allowed the commission to fix the amount of bond or insurance coverage required of a carrier and the statute allowed a plaintiff to join as a party the insurance carrier who had issued a policy to meet the coverage requirement. However, when an insurer was joined as a party in an action against a carrier, the section did not limit the amount of damages which can be pled against the insurer to the minimum coverage required of carriers by the commission. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under former Code 1933, § 68-612).

**Existence of approved policy necessary for joinder.** — Unless the applicability of former O.C.G.A. § 46-7-12 was shown by evidence of the existence of a policy issued with the approval of the Public Service Commission, the general rule, that an insurer may not be joined as a party defendant with the insurer's insured when there had been no judgment previously obtained against the insured, was applicable. *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 359 S.E.2d 351 (1987), cert. denied, 183 Ga. App. 906, 359 S.E.2d 351 (1988) (decided under former O.C.G.A. § 46-7-12).

**Joinder for out-of-state collision.** — Joinder was not prohibited merely because a collision occurred on a highway in another state. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

**Joinder of interstate carrier.** — Insurer of motor carrier was joined in an action against a carrier operating under a certificate of convenience issued by the state and who was required to be, or could have been sued in Georgia. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

**When joinder of motor carrier's insurer was authorized.** — In actions against a motor carrier, required by former Code 1933, § 68-612 to file such bond or insurance with the commission, joinder of the motor carrier's insurer was autho-

rized, regardless of whether the carrier was operating in interstate or intrastate commerce at the time of the injury. *Harper Motor Lines v. Roling*, 218 Ga. 812, 130 S.E.2d 817 (1963) (decided under former Code 1933, § 68-612).

**Motor carrier not exempt.** — Insurer was properly joined in action against transportation company when the truck involved in the accident was registered as a motor carrier and at times hauled loads which were not exempt despite the truck's exempt cargo of produce at the time of the accident. *Smith v. Commercial Transp., Inc.*, 220 Ga. App. 866, 470 S.E.2d 446 (1996) (decided under former O.C.G.A. § 46-7-12).

In a wrongful death case, a motor carrier's insurer was subject to direct suit under the direct action statute, former O.C.G.A. § 46-7-12(c). The exemption for motor vehicles used exclusively to carry dairy or agricultural products, O.C.G.A. § 46-1-1(9)(C)(x), did not apply because the insured used a tractor to haul other products besides logs, although the insured hauled logs exclusively in the weeks prior to the accident. *Occidental Fire & Cas. Co. of N.C. v. Johnson*, 302 Ga. App. 677, 691 S.E.2d 589 (2010) (decided under former O.C.G.A. § 46-7-12).

**Joinder not authorized.** — Truck which was engaged exclusively in the transportation of potting soil was not a "motor common carrier" and former O.C.G.A. § 46-7-12(e) did not, therefore, authorize joinder of the truck's insurer as a defendant in a suit against the insured. *National Indem. Co. v. Tatum*, 193 Ga. App. 698, 388 S.E.2d 896 (1989) (decided under former O.C.G.A. § 46-7-12).

Truck which was engaged exclusively in the transportation of gravel, crushed stone, plant mix road material or road base materials was not a "motor common carrier" and former O.C.G.A. § 46-7-12(e) did not, therefore, afford plaintiff the right to join the truck's insurer as a defendant in a suit against the insured. *Bailey v. Occidental Fire & Cas. Co.*, 193 Ga. App. 710, 388 S.E.2d 899 (1989) (decided under former O.C.G.A. § 46-7-12).

Although former O.C.G.A. § 46-7-12 provided for joinder of an insurer when that insurer had potential liability under



an insurance policy, the statute did not create a cause of action against an insurer which, under the terms of the insurer's policy, cannot be liable with respect to the accident in question. *McMillon v. Empire Fire & Marine Ins. Co.*, 209 Ga. App. 378, 433 S.E.2d 429 (1993) (decided under former O.C.G.A. § 46-7-12).

Injured person could not join a motor carrier's insurer in an action against the carrier since the carrier was not registered in Georgia and had not filed an insurance policy with the commission. *Caudill v. Strickland*, 230 Ga. App. 644, 498 S.E.2d 81 (1998) (decided under former O.C.G.A. § 46-7-12).

**When joinder of parties not permissible.** — In the absence of statutory provisions to the contrary, an insurance company, issuing an ordinary indemnity policy, cannot be joined as a party defendant with a tortfeasor in order to "fix the liability" of the insurance company. *Arnold v. Walton*, 205 Ga. 606, 54 S.E.2d 424 (1949) (decided under former Code 1933, § 68-612).

**No joinder of defendant not in privity with insurance company when carrier and company joined.** — When a motor carrier and the carrier's insurance company were joined as defendants, no other defendant may be joined who was not in privity with the insurance company. *Har-Pen Truck Lines v. Mills*, 378 F.2d 705 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

**No joinder of insurer in action against carrier for injuries caused in another state.** — Insurance carrier may not be joined under former Code 1933, § 68-612 as a defendant with a motor common carrier licensed to do intrastate and interstate business in an action brought in this state by a passenger on an interstate journey for personal injuries caused by the carrier's negligence in another state. *Rogers v. Atlantic Greyhound Corp.*, 50 F. Supp. 662 (S.D. Ga. 1943).

**Petition not subject to dismissal on misjoinder grounds.** — Petition for damages joining as defendants a common carrier for hire by motor truck, the truck's driver, and the truck's insurer, under former Code 1933, § 68-612, was not subject to demurrer (now motion to dismiss) on

the ground that there was a misjoinder of parties and causes of action. *Pilot Freight Carriers, Inc. v. Parks*, 80 Ga. App. 137, 55 S.E.2d 746 (1949) (decided under former Code 1933, § 68-612).

**No misjoinder when action against proper parties.** — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver's employment as a driver for common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was properly brought against the three named defendants, and there was no misjoinder. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-612).

**Construction of joinder provisions of this Code section.** — The 1937 amendment (Ga. L. 1937, p. 730) to the original statute must also be strictly construed, and it does not expressly or otherwise provide for the joining in one action of an action *ex contractu* against an insurance company and an action in tort against a third person in no way connected with the insurance company. *Reeves v. McHan*, 78 Ga. App. 305, 50 S.E.2d 787 (1948) (decided under former Code 1933, § 68-612).

#### 4. Other Procedural Issues

**Suing insurance carrier first despite policy provisions to contrary.** — Insurance carrier could be sued without first obtaining judgment against common carrier notwithstanding provisions in the policy to the contrary. *Maryland Cas. Co. v. Dobson*, 57 Ga. App. 594, 196 S.E. 300 (1938) (decided under former Code 1933, § 68-612).

**Bringing suit against carrier's insurer.** — Member of public who was injured by negligence of motor common carrier need not obtain judgment against the carrier as condition precedent to bringing suit against carrier's insurer, any contractual agreement between the insurer and the carrier to the contrary notwithstanding. *Griffin v. Johnson*, 157 Ga. App. 657, 278 S.E.2d 422 (1981) (decided under former O.C.G.A. § 46-7-12).



**Suit against insurer did not require joinder of motor carrier.** — An action on the policy itself against the insurer of a motor carrier was cognizable as an independent suit without joinder of the motor carrier. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

**Insurer subject to action on policy by injured member of public directly.** — Since bond or policy under former Code 1933, § 68-612 was given for the protection of the public, and the policy was one against liability, and since the intent and meaning of the statute permitted an action thereon jointly against the motor carrier and the surety on the bond or the insurer in the policy, the provisions of the section were read into the policy and supersede any provision therein to the contrary. Accordingly, the insurer was subject to action by an injured member of the public directly on the policy, without the necessity of first suing and obtaining judgment against the carrier. *Great Am. Indem. Co. v. Durham*, 54 Ga. App. 353, 187 S.E. 891 (1936) (decided under former Code 1933, § 68-612).

**Joint or separate actions against parties.** — All three parties — the driver, the carrier, and the insurance company — may be joined and any one of such parties may be sued alone and thereby bind the company for payment of eventual judgment. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), cert. denied, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**Breach of policy conditions may not defeat claims when actual notice to company of actions.** — Under former Code 1933, § 68-612 a breach of the policy conditions between the insured and the company, may not defeat the public third-parties claims, when there was actual notice to the company of the actions. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), cert. denied, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225

(1969); (decided under former Code 1933, § 68-612).

Insurer was absolutely liable for any unsatisfied judgment which may be obtained against the insurer's insured whether or not the insurer's insured breached the conditions of the policy. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

### Bond or Indemnity Insurance

**Filing of bond or indemnity insurance with commissioner required.** — Former Code 1933, § 68-612 required a motor common carrier to file a bond or policy of indemnity insurance with commission to protect the public against injury caused by its negligence, and permits suit against the motor carrier and the insurer in the same action. *Gates v. L.G. DeWitt, Inc.*, 528 F.2d 405 (5th Cir.), modified, 532 F.2d 1052 (5th Cir. 1976) (decided under former Code 1933, § 68-612).

**Named insured.** — Trial court properly found that a corporation was the named insured, notwithstanding the policy's identification of the named insured as an individual, doing business as a trade name, as the insurer filed a certificate of insurance with the Georgia Public Service Commission pursuant to former O.C.G.A. § 46-7-12(a) stating that the insurer had insured the corporation, doing business as the trade name. *Hartford Cas. Ins. Co. v. Smith*, 268 Ga. App. 224, 603 S.E.2d 298 (2004) (decided under former O.C.G.A. § 46-7-12).

**Approved policy is in nature of substitute surety bond.** — If the carrier's insurance policy was approved by the commission in accordance with former O.C.G.A. § 46-7-12, the policy was in the nature of a substitute surety bond, and the insurer was absolutely liable for any loss occasioned by the insurer's insured, any provisions in the policy, or in any rider attached thereto, to the contrary notwithstanding. *American Motorists Ins. Co. v. King Shrimp Co.*, 199 Ga. App. 847, 406 S.E.2d 273 (1991) (decided under former O.C.G.A. § 46-7-12).

**Independent cause of action against insurer.** — In addition to a suit

in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

**Purpose of Code section.** — Purposes of former Code 1933, § 68-612 were to protect the members of the public who were injured by the operation of the common carrier's vehicles and the insurance contract may not defeat this public policy by conditions to which the state and public were not a party. This was a prerequisite to doing business in this state and on the state's highways either directly or by agent employees. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), *commented on in* 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Indemnity insurance policy was not for the benefit of the insured but for the sole benefit of those who may have a cause of action for damages for the negligence of the motor common carrier. Such a policy was in the nature of a substitute surety bond and created liability in the insurer regardless of the insured's breach of the conditions of the policy. *Progressive Cas. Ins. Co. v. Bryant*, 205 Ga. App. 164, 421 S.E.2d 329 (1992) (decided under former O.C.G.A. § 46-7-12).

**Three classes of protection.** — Former Code 1933, § 68-612 was designed to protect three classes against financial liability of motor common carriers to respond in damages for the negligent conduct of the business of motor common carriers. First, motor common carriers of passengers; second, motor common carriers of freight; and third, the public (when neither the relationship of carrier and passenger or carrier and shipper exists). *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

**Protection of public is primary purpose of requiring bond or security.** —

Primary purpose of requiring a bond, policy of insurance, or other security as a condition to the operation of public service motor vehicles for hire was for the protection of the public, by assuring those who were injured, in person or property, through the negligent operation of such vehicles, compensation for the injuries or damages sustained. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), *commented on in* 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**Bonds provided for in this section for benefit of public.** — Bond or indemnity insurance was required for benefit of passengers and public; the passengers and the public being beneficiaries which the statute sought to protect and insure, the indemnity insurance policy required by former Code 1933, § 68-612 was one of insurance against liability, and not insurance against loss by common carrier. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933); *LaHatte v. Walton*, 53 Ga. App. 6, 184 S.E. 742 (1936) (decided under former Code 1933, § 68-612).

According to the language and patent intentment of former Code 1933, § 68-612, the bonds provided for herein are solely for the benefit of those persons who by reason of the negligence of the carrier, the carrier's servants or agents, may have a cause of action for damages, such bonds being "for the benefit of and subject to action thereon by any person who shall sustain actionable injury or loss protected thereby." *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

**Definition of indemnity insurance policy.** — Policy of insurance under former Code 1933, § 68-612 was not one of indemnity against loss as that term was generally understood; but was a direct and primary obligation to any person who shall sustain actionable injury or loss by reason of the negligence of the insured in the operation of the insured's motor vehicles insured under the policy. The sustaining of actionable injury was, under the



statute, the only condition precedent to an action on the policy. *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 24 (1936); *Shapiro v. Aetna Cas. & Sur. Co.*, 234 F. Supp. 41 (N.D. Ga. 1963), *aff'd*, 337 F.2d 237 (5th Cir. 1964); *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**Indemnity and not liability insurance required by this section.** — If the insurer issued a single policy for more than the statutory minimum, the plaintiff suing under former Code 1933, § 68-612 was not limited to a judgment against that insurer for the minimum. The insurance required by that section was indemnity insurance, not liability insurance. It would create multiple litigation to require the plaintiffs to recover from the indemnitor the statutory minimum in the initial action and file later actions for excess amounts. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under former Code 1933, § 68-612).

**Statute referred to direct liability policy.** — In spite of the use of the phrase "indemnity insurance," former Code 1933, § 68-612 referred to a direct liability policy rather than indemnity in the true sense. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969) (decided under former Code 1933, § 68-612).

**Policy issued is policy of insurance against liability.** — Insurance policy issued to a motor common carrier, with the approval of the commission, under the provisions of former Code 1933, § 68-612, which provided that the policy was one "for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents," was a policy of insurance against liability, any provisions in the policy, or in any rider attached thereto, to the contrary notwithstanding, and an action may be brought upon the policy directly against

the insurer by any member of the public, for the recovery of damages proximately caused by the negligence of the motor common carrier in the operation of one of the carrier's motor trucks along a public highway of this state, without first having obtained a judgment establishing liability for such negligence against the motor carrier, and without making the motor carrier a party to the action. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, *aff'd*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

**Extent of coverage of security bond or policy.** — Security bond or policy ordinarily covers only injuries or damages which result from the careless, negligent, or improper operation of the motor carrier's vehicles. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**No impairment of public's statutory rights by stipulations between parties to security contract.** — Under the bond or policy, the public has statutory rights which cannot be impaired by stipulations between the immediate parties to the security contract. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**Incorporation of provisions into insurance policy.** — Policy with a rider upon the policy placed there by the commission pursuant to the provisions of former Code 1933, § 68-612 becomes a statutory policy, and the provisions of that section respecting the character of the policy and the liability of the parties, were read into the policy and supersede any provisions, if any, to the contrary, either in the policy or in the rider attached thereto. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, *aff'd*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).



**Incorporation of provisions into bond filed.** — Provision that the bond given by the carrier must be for the protection of the public against injuries proximately caused by the carriers' negligence, must, when the bond was approved by the commission as required by former Code 1933, § 68-612 as a condition precedent to the issuance of the certificate to the carrier, be read into the bond and become one of the provisions thereof, anything in the bond or riders attached thereto to the contrary notwithstanding. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, aff'd, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

**Bond or insurance provisions contrary to statute without force or effect.** — Bond or policy of indemnity insurance given under former Code 1933, § 68-612 must conform to its requirements, and a provision contained therein contrary to such requirements was without force and effect. *Maryland Cas. Co. v. Dobson*, 57 Ga. App. 594, 196 S.E. 300 (1938) (decided under former Code 1933, § 68-612).

**Substitution of indemnity policy by carrier.** — When a carrier is allowed to substitute a policy of indemnity insurance, such policy must substantially conform to all of the provisions of the statute relating to bonds. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

**Legislative intent that insurer stand in shoes of motor common carrier.** — It was the legislative intent in passing former Code 1933, § 68-612 that the insurer carrier was to stand in the shoes of the motor common carrier and be liable in any instance of negligence when the motor common carrier was liable. *St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co.*, 116 Ga. App. 606, 158 S.E.2d 476 (1967) (decided under former Code 1933, § 68-612).

**When judgment creditor may recover.** — One who obtains a judgment against the insured and then seeks to enforce the judgment against the insurer occupies a like status to the insured; one derives one's rights under the policy

through the insured, and one is entitled to recover under the policy only if it appears that all conditions precedent have been complied with. *Commercial Union Ins. Co. v. Bradley Co.*, 186 Ga. App. 610, 367 S.E.2d 820 (1988) (decided under former O.C.G.A. § 46-7-12).

**Liability of surety or insurer as joint and several** with the liability of the owner or operator of the motor vehicle. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), aff'd, 402 F.2d 988 (5th Cir. 1968), cert. denied, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

**Liability of insurance carrier extends to existence of relation of common carrier and passenger.** — When an indemnity insurance policy was executed under the provisions of former Code 1933, § 68-612, containing the words, "resulting from the negligent operation, maintenance or use of motor vehicles," such words would not be construed to limit liability for negligence of the driver of a passenger vehicle while such vehicle was in motion only. This being a statutory provision, the provisions of the policy were superseded by the terms of the statute. The endorsement of the commission of such words in a rider attached to the policy was construed to mean that the liability of the insurance carrier extended to and included injuries received by a passenger, caused by the negligence of such motor carrier, the carrier's servants or agents, during the existence of the relation of common carrier and passenger, and until such relation was terminated in some manner provided by law. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

**Liability of insurance carrier not limited to negligence of carrier only when vehicle in motion.** — Former Code 1933, § 68-612 nowhere provided that the liability of the insurance carrier be limited to the negligence of the motor common carrier, the carrier's servants or agents, only when the vehicle was in motion. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227

(1943) (decided under former Code 1933, § 68-612).

**No insurance required for carrier's vehicles while being used outside employment.** — Plain reading of the statute will not support a holding that a carrier must provide individual liability coverage for the carrier's servants or agents while those agents are operating the carrier's vehicles outside the scope of their employment. *Great W. Cas. Co. v. Norris*, 734 F.2d 697 (11th Cir. 1984) (decided under former O.C.G.A. § 46-7-12).

**Liability of insurance carrier on policy is ancillary to that of common carrier.** — While the "cause of action" (or statement of a claim) was not on the tort, nevertheless, the tort constituted the real cause of action, and the liability of the insurance carrier on the carrier's policy, issued as required by law, was merely ancillary to that of the common carrier. *Addington v. Ohio S. Express, Inc.*, 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

**Insurance carrier may not contract for less liability than imposed by statute.** — Under former Code 1933, § 68-612, it was the legislative intent that the insurance carrier was to stand in the shoes of the motor common carrier of passengers and be liable to the passenger in any instance of negligence when the motor common carrier was liable. The statute nowhere remotely expressed or implied that when an insurance carrier undertook for hire to stand sponsor for the negligent acts of a motor common carrier of passengers under the general law governing this relationship such insurance carrier may contract for a less liability than that which the statute imposed upon the motor common carrier itself. To give the statute such a construction would be to render the statute subservient to the conditions of the insurance policy and not the insurance policy subservient to the provisions of the statute. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

**Nothing in former Code 1933, § 68-612 limited direct liability of insurer of carrier,** when joined as a defendant in an action against a carrier to the

minimum bond or insurance coverage required of carriers by the commission. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under former Code 1933, § 68-612).

**No liability of insurer where insured carrier not liable.** — It was not the purpose of former Code 1933, § 68-612 to make an insurance company, which had issued the carrier a policy of indemnity insurance in lieu of a bond, liable when the insured carrier itself was not liable. *Robbins v. Liberty Mut. Ins. Co.*, 113 Ga. App. 393, 148 S.E.2d 172 (1966) (decided under former Code 1933, § 68-612).

**No actionable injury established as a result of insured's indemnification.** — In a negligence suit arising from a tractor trailer collision, a trial court erred by failing to grant summary judgment to a transfer company's insurer because an indemnity agreement between the suing driver and the transfer company made it impossible for the suing driver to obtain a judgment against the transfer company; therefore, there was no actionable injury, pursuant to former O.C.G.A. § 46-7-12, for which the transfer company's insurer could be held liable. *Coleman v. B-H Transfer Co.*, 290 Ga. App. 503, 659 S.E.2d 880 (2008), *aff'd*, 284 Ga. 624, 669 S.E.2d 141 (2008) (decided under former O.C.G.A. § 46-7-12).

**Liability probably does not extend to punitive damages.** — Liability under former Code 1933, § 68-612 would probably not extend to punitive damages. As a factual probability, attorneys fees would logically fall into the same classification as being uncollectible from the company. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969) (decided under former Code 1933, § 68-612).

**Duty of issuer of liability surety bond.** — Liability surety bond, when not supplanted by an insurance policy, was similar to a motor vehicle liability insurance policy in that the bond also provides protection to the general public for damage to person or property arising from negligent acts or omissions of the motor carrier for whom it was issued. The issuer

of the bond was obligated to provide the minimum no-fault coverage afforded under former O.C.G.A. § 33-34-4, notwithstanding any provisions of the contract or bond. *Homick v. American Cas. Co.*, 202 Ga. App. 831, 415 S.E.2d 669, cert. denied, 202 Ga. App. 906, 415 S.E.2d 669 (1992) (decided under former O.C.G.A. § 46-7-12).

**Liability of insurance carrier limited.** — Liability of an insurer of a motor common carrier for an actionable loss caused by a vehicle not specifically described in the insurance policy was limited to the minimum limits established by rule of the commission. *Ross v. Stephens*, 269 Ga. 266, 496 S.E.2d 705 (1998) (decided under former O.C.G.A. § 46-7-12).

**Bond or indemnity insurance.** — Minimum compulsory liability limits established by a rule of the Public Service Commission were applicable to personal injury claims asserted by passengers in a tractor-trailer, when the passengers sought recovery up to minimum limits of \$100,000/\$300,000 as established by the rule; the claims were not subject to the lower limits established by O.C.G.A. § 40-9-2(5)(A), even though the tractor-trailer was a freight carrier and not a passenger carrier. *Guinn Transp., Inc. v. Canal Ins. Co.*, 234 Ga. App. 235, 507 S.E.2d 144 (1998) (decided under former O.C.G.A. § 46-7-12).

**Notice of cancellation.** — When a Form E endorsement filed with the Georgia Public Service Commission provided that an insurance company had issued the insurer's insured an insurance policy and the policy lapsed before an incident giving rise to liability on the part of the insured and before proper notice of cancellation was given to the Commission, the insurer's liability to a third party injured by the insured was based on the policy itself as opposed to liability based on the minimum coverage imposed by law. *Progressive Preferred Ins. Co. v. Ramirez*, 277 Ga. 392, 588 S.E.2d 751 (2003) (decided under former O.C.G.A. § 46-7-12).

**Failure to file notice of cancellation.** — Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct

action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former O.C.G.A. § 46-7-3 to operate as a carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. *Kolencik v. Stratford Ins. Co.*, No. 1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-12).

### Interstate Carriers

**Section applicable to interstate carriers.** — Subsection (e) of former O.C.G.A. § 46-7-12 applied to interstate as well as intrastate carriers; thus, a motorist injured in an accident with a tractor trailer owned by a motor carrier engaged solely in interstate commerce could maintain a direct action against the insurer of the motor carrier. *Williams v. Southern Drayage, Inc.*, 213 Ga. App. 895, 446 S.E.2d 758 (1994) (decided under former Code 1933, § 68-612).

Carrier registered with the Public Service Commission was not exempt from subsection (e) of former O.C.G.A. § 46-7-12 simply because it engaged only in interstate commerce. Additionally, the federal law did not preempt the Georgia definition of motor carrier for purposes of a personal injury action against the carrier. *Xpress Cargo Sys. v. McMath*, 225 Ga. App. 32, 481 S.E.2d 885 (1997) (decided under former O.C.G.A. § 46-7-12).

**Section inapplicable to causes arising out of interstate commerce.** — Although former O.C.G.A. § 46-7-12 authorized a shipper to bring a direct action against the insurer who provided liability coverage to a motor common carrier, the section did not apply to a cause of action which arose out of interstate commerce. *Commercial Union Ins. Co. v. Bradley Co.*, 186 Ga. App. 610, 367 S.E.2d 820 (1988) (decided under former O.C.G.A. § 46-7-12).

**No conflict with congressional regulation of motor carriers.** — Former Code 1933, § 68-612 did not conflict with congressional regulation of motor carriers engaged in interstate commerce, but was a reasonable and valid requirement imposed upon those who seek to do an intra-



state motor carrier business in Georgia. *Acme Freight Lines v. Blackmon*, 131 F.2d 62 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

**Federal Aviation Administration Authorization Act did not preempt statute.** — Federal Aviation Administration Authorization Act prohibited a state from enacting or enforcing a law or regulation related to “a price, route, or service” of any motor carrier, but did not invalidate insurance requirements imposed by the statute and Public Service Commission Rule 1-8-1-.01 as the act did not restrict a state’s authority to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements. *Driskell v. Empire Fire & Marine Ins. Co.*, 249 Ga. App. 56, 547 S.E.2d 360 (2001) (decided under former O.C.G.A. § 46-7-12).

**Section designed to protect public.** — Former Code 1933, § 68-612 was designed to protect the “public” whose safety may be endangered by the carrier’s operations as distinguished from those having an interstate relationship. It cannot be assumed that the state attempted to enact legislation having an extraterritorial ef-

fect by applying to interstate passengers and cargoes. *Rogers v. Atlantic Greyhound Corp.*, 50 F. Supp. 662 (S.D. Ga. 1943) (decided under former O.C.G.A. § 46-7-12).

**Provision allowing for direct actions against insurance carriers applied to interstate carriers.** — Proper interpretation of the provision in former Code 1933, § 68-612, allowing for direct actions against insurance carriers, was that the statute applied to interstate carriers as well as intrastate carriers. *Kimberly v. Bankers & Shippers Ins. Co.*, 490 F. Supp. 93 (N.D. Ga. 1980) (decided under former Code 1933, § 68-612).

**Persons injured by negligence of carrier were entitled to rely upon required protection of Code section.** — When people were injured upon the highways of this state by the negligence of a carrier, the individuals were properly entitled to rely upon the protection required by former Code 1933, § 68-612, and this was true whether the particular vehicle was at the time of the accident engaged in interstate or intrastate commerce. *Acme Freight Lines v. Blackmon*, 131 F.2d 62 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-612, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Purpose of Code section.** — It was the purpose of former Code 1933, § 68-612 to protect the public against injury which may be caused by the negligence of the motor common carrier, the carrier’s ser-

vants or agents. 1948-49 Op. Att’y Gen. p. 585 (decided under former Code 1933, § 68-612).

**Commission had discretion concerning bond or indemnity insurance.** — Former Code 1933, § 68-612 placed a discretion in the commission as to whether or not a bond or a policy of indemnity insurance shall be required of carriers coming under its jurisdiction. 1948-49 Op. Att’y Gen. p. 585 (decided under former Code 1933, § 68-612).

## RESEARCH REFERENCES

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 192 et seq., 226.

**ALR.** — Validity of municipal ordinance requiring indemnity insurance as condition of operating taxicab, 95 ALR 1224.

Territorial coverage of motor carrier’s public liability policy required by statute

or ordinance as coextensive with area of authorized operation, 154 ALR 520.

Liability of motor carrier for injuries to passengers from accident occasioned by blowout or other failure of tire, 44 ALR2d 835.

Owning, leasing, or otherwise engaging

in business of furnishing services for taxicabs as basis of tort liability for acts of taxi driver under respondeat superior doctrine, 8 ALR3d 818.

40-1-113. Transportation contracts limiting liability.

- (a) As used in this Code section, the term:
- (1) “Motor carrier transportation contract” means a contract, agreement, or understanding covering:
- (A) The transportation of property for compensation or hire by the motor carrier;
- (B) Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or
- (C) A service incidental to activity described in subparagraph (A) or (B) of this paragraph, including, but not limited to, storage of property.

Motor carrier transportation contract shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(2) “Promisee” means the person promising to provide transportation of property and any agents, employees, servants, or independent contractors who are directly responsible to such person but shall not include a motor carrier party to a motor carrier transportation contract with such person and such motor carrier’s agents, employees, servants, or independent contractors directly responsible to such motor carrier.

(b) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable. (Code 1981, § 40-1-113, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 46-7-12.1, are included in the annotations for this Code section.

**Failure to obtain permit had no im-**

**pact on status as motor carrier of property.** — Motor carrier's noncompliance with the carrier's responsibility to obtain a permit had no impact on the carrier's status as a Georgia "motor carrier of property" under former paragraph (8) of O.C.G.A. § 46-1-1 because while the failure to get a permit rendered the motor carrier in violation of the Act, that failure did not render the motor carrier any less a "motor carrier of property" under applicable law. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

**Policy triggers coverage, not technical filings with state.** — Insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence, notwithstanding the carrier's failure to file a certificate of insurance as required under the Act; the statute was a clear expression of the legislature's intent to prevent insurers from insulating themselves from liability under the Motor Carrier Act by failing to comply with the Act's technical requirements, and the insurer's duty to the public stems from the Act as triggered through the insurance policy rather than from the insurer's filings with the state. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

**Insurer's attempt to reduce or ne-**

**gate obligations invalid.** — Court of appeals erred in affirming an order granting an insurer's motion for summary judgment in the insurer's action seeking a declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver's employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer's status as a motor carrier and of the insurer's need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any provisions in the insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

#### 40-1-114. Temporary emergency authority issued to carriers.

Notwithstanding any other provision of law to the contrary, in order to authorize the provision of passenger or household goods service for which there is an immediate and urgent need to a point or points, or within a territory, with respect to which there is no motor carrier service capable of meeting such need, upon receipt of an application for temporary emergency authority and upon payment of the appropriate fee as fixed by statute, the department may, in its discretion and without a hearing or other prior proceeding, grant to any person temporary motor carrier authority for such service. The order granting such authority shall contain the department's findings supporting its determination that there is an unmet immediate and urgent need for such service and shall contain such conditions as the commissioner finds necessary with respect to such authority. Emergency temporary motor carrier authority, unless suspended or revoked for good cause



within such period, shall be valid for such time as the department shall specify but not for more than an aggregate of 30 days. Such authority shall in no case be renewed and shall create no presumption that corresponding permanent authority will be granted thereafter, except that, where a motor carrier granted temporary emergency motor carrier authority under the provisions of this Code section makes application during the period of said temporary emergency authority for permanent motor carrier authority corresponding to that authorized in its temporary emergency authority, the temporary emergency motor carrier authority will be extended to the finalization of the permanent authority application unless sooner suspended or revoked for good cause within the extended period. (Code 1981, § 40-1-114, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's note.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-611.1 are included in the annotations for this Code section.

**Prior application for certificate of public necessity not required.** — Applicant for this authority is not required to first make application for certificate of public convenience and necessity. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

**Commission need not issue certificate of public necessity.** — Commission need not issue certificate of public convenience

and necessity to applicant for temporary authority. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

**Construction with Code Section 46-7-3.** — Temporary emergency authority granted under former Code 1933, § 68-611.1 (see former O.C.G.A. § 46-7-13) was exception to general requirement of former Code 1933, § 68-604 (see former O.C.G.A. § 46-7-3) that no motor common carrier can operate without first obtaining a certificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

### 40-1-115. Notice of discontinuance of route.

A motor carrier of passengers may discontinue its entire service on any route upon 30 days' published notice to be prescribed by the department, and thereupon its certificate therefor shall be canceled. A motor carrier of passengers may discontinue any part of its service on any route upon 30 days' published notice, subject, however, to the right of the department to withdraw its certificate for such route if, in the opinion of the commissioner, such diminished service is not adequate or is no longer compatible with the public interest. (Code 1981, § 40-1-115, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### 40-1-116. Additional taxation prohibited by localities.

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a motor carrier to operate equipment, or on the equipment, or

on any incidents of the business of a motor carrier. (Code 1981, § 40-1-116, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

## JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, Ga. L. 1931, p. 199, § 18, former Code 1933, § 68-623, and former O.C.G.A. §§ 46-7-15 and 46-7-60, are included in the annotations for this Code section.

**This Code section not violative of constitutional rights.** — Former Code 1933, § 68-623 did not violate Ga. Const. 1976, Art. I, Sec. I, Para. I and Art. I, Sec. II, Para. III (Ga. Const. 1983, Art. I, Sec. I, Para. I; Art. I, Sec. I, Para. II), which declared that protection to person and property was the paramount duty of government and shall be impartial and complete, and no person shall be deprived of life, liberty, or property, except by due process of law. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623); *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623).

Former Code 1933, § 68-623 was not unconstitutional on grounds that the statute referred to more than one subject matter or contained matter different from what was expressed in the statute's title. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623); *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623); *V.C. Ellington Co. v. City of Macon*, 177 Ga. 541, 170 S.E. 813 (1933) (decided under former Code 1933, § 68-623).

**Private and common carriers for hire covered by Code section.** — Former Code 1933, § 68-623 applied to both private carriers for hire and common carriers for hire, and a municipal road-use tax on these motor carriers was void. *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623).

**Reasonable classification exempts producer from prescribed fee.** — Lan-

guage "So long as the title remains in the producer" limited the operation of the statutory exemption to such an extent that the only property in the class mentioned which was exempted was property where the "title remains in the producer." This was a reasonable classification in favor of the producer, which will enable movement of the products over the highways so long as title remains in the producer without exaction of the prescribed fee. *Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm'n*, 179 Ga. 431, 176 S.E. 487 (1934), *aff'd*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935) (decided under Ga. L. 1931, p. 199, § 18).

**Annual license fee not unreasonable or oppressive.** — As the annual license fee was for the privilege for a use as extensive as the carrier wills that it shall be, there was nothing unreasonable or oppressive in the burden so imposed. *Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm'n*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935) (decided under Ga. L. 1931, p. 199, § 18).

**Exemption from municipal taxation covers incidents of carrier business.** — Former Code 1933, § 68-623 set up an exemption of a motor common carrier from municipal taxation, not only on the carrier's equipment and the right to operate the equipment, but also on "any incidents of said motor carrier business." *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

"Incidents" of the business of a motor common carrier did not mean those things without which the business cannot be carried on. Such would be more properly classified as the business itself, rather than an incident thereof. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

Incident of the business of a motor common carrier of freight would be something naturally associated as pertinent to such

transportation and necessarily dependent upon it, but without which the business of transportation might nevertheless be carried on, i.e., the incidental operation would be necessarily dependent upon the transportation, but the business of transportation would not be necessarily dependent upon the incidental operation. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under Ga. L. 1931, p. 199, § 18).

**Operation of service is incident of carrier's business within statute.** — Operation by a motor common carrier, at a municipality lying on the carrier's route, of a truck to pick up and deliver freight which was to be or had been shipped from or to patrons at such municipality, was an incident of the carrier's business of transporting freight, within former Code 1933, § 68-623, and by virtue of that section it was exempt from local taxation. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

**Operation of motor common carrier in and around municipality not exempt from this Code section.** — Operation of a motor common carrier in and immediately around a municipality lying on the carrier's route of a pick-up and delivery service of freight that had been shipped or was to be shipped to or by patrons at the municipality, was a service, within the classification of an incident of the business of a motor common carrier, and the operation cannot be termed "local draying," such as was exempted from the operation of Ga. L. 1931, pp. 197 and 207, and to which the exemption from local taxation, under former Code 1933, § 68-602, would not apply. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-602).

**City tax ordinance held invalid.** — Taxing ordinance of city was invalid because it was in conflict with former Code 1933, § 68-623, it being evident that the General Assembly's purpose was to reserve to the state the exclusive right to tax common carrier. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623).

**City without power to pass tax ordinance contrary to statute.** — In view

of the provisions of subsection (d) of former Code 1933, § 68-623, the mayor and council of the City of Atlanta were without power to pass an ordinance imposing an occupational license tax of \$300.00 for the operation of a bus terminal. *Southeastern Greyhound Lines v. City of Atlanta*, 177 Ga. 181, 170 S.E. 43 (1933) (decided under former Code 1933, § 68-623).

**Entire municipal ordinance fails where repugnant to statute.** — When a municipal corporation attempted to lay a charge indifferently against motor common carriers and motor carriers for hire other than common carriers for the use of the municipality's streets by such carriers, and the portion of the ordinance relating to common carriers was invalid because the ordinance was repugnant to state law, the entire ordinance will necessarily fail, since the objectionable portion as to common carriers was so connected with the general legislative scheme that, if it should be stricken out, effect could not be given to the intention of the mayor and council in adopting the ordinance. *V.C. Ellington Co. v. City of Macon*, 177 Ga. 541, 170 S.E. 813 (1933) (decided under former Code 1933, § 68-623).

**Control of state over streets and highways of entire commonwealth is paramount and supreme.** — Municipal ordinances which conflict with legislative enactments must yield to the superior authority of the state. Silence on the part of the state, while the state may concede for the time being to municipalities the control and regulation of the streets and highways within the corporate limits of a municipality, was no bar to the exercise of the supreme authority whenever the state sees fit, by legislative enactment, to exercise authority and control. *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under Ga. L. 1931, p. 199, § 18).

**"Highway" construed.** — Word "highways" as used in former Code 1933, § 68-623 included streets. *Southeastern Greyhound Lines v. City of Atlanta*, 177 Ga. 181, 170 S.E. 43 (1933) (decided under Ga. L. 1931, p. 199, § 18).

**Fees charged are in nature of tax for use of highways.** — Fees charged motor carriers for certificate of public con-



venience and necessity and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use of the highways for the purpose of gain. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

**No right of interstate carrier to use highway without paying.** — Interstate carrier had no better right than any other to use the state's improved highway without the state's consent, or without paying for the use. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

### **Regulation of use or roads by state.**

— State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from the roads' common uses and purposes to the carrier's business. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

**Cited** in *Dixie Ohio Express Co. v. State Revenue Comm'n*, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939); *Benton Bros. Drayage & Storage Co. v. Mayor of Savannah*, 219 Ga. 172, 132 S.E.2d 196 (1963).

## **OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-518, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Lessor exempt from purchasing tags for vehicles leased to postal service.** — Lessors relieved of liability of purchasing registration tags for vehicles

leased to postal service, when said leases are longer than 30 days duration and the postal service has exclusive use of the vehicles during the lease periods; when the lessors regain the use of vehicles on the termination of the leases or before their termination, they will again be responsible for the purchase of registration tags for the vehicles. 1974 Op. Att'y Gen. No. U74-16 (decided under former Code 1933, § 68-518).

## **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 300, 305, 313.

**ALR.** — State regulation of carriers by motor vehicle as affected by interstate

commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

### **40-1-117. (For effective date, see note.) Registered agents; service; vehicles excluded from motor common or contract carrier.**

(a) Each nonresident motor carrier shall, before any certificate or permit is issued to it under this part or at the time of registering as required by Code Section 40-2-140, designate and maintain in this state an agent or agents upon whom may be served all summonses or other lawful processes in any action or proceeding against such motor carrier growing out of its carrier operations; and service of process upon or acceptance or acknowledgment of such service by any such agent shall have the same legal force and validity as if duly served upon such nonresident carrier personally. Such designation shall be in writing, shall give the name and address of such agent or agents, and shall be

filed in the office of the state revenue commissioner. Upon failure of any nonresident motor carrier to file such designation with the state revenue commissioner or to maintain such an agent in this state at the address given, such nonresident carrier shall be conclusively deemed to have designated the Secretary of State and his or her successors in office as such agent; and service of process upon or acceptance or acknowledgment of such service by the Secretary of State shall have the same legal force and validity as if duly served upon such nonresident carrier personally, provided that notice of such service and a copy of the process are immediately sent by registered or certified mail or statutory overnight delivery, return receipt requested, by the Secretary of State or his or her successor in office to such nonresident carrier, if its address be known. Service of such process upon the Secretary of State shall be made by delivering to his or her office two copies of such process with a fee of \$10.00.

(b) Except in those cases where the Constitution requires otherwise, any action against any resident or nonresident motor carrier for damages by reason of any breach of duty, whether contractual or otherwise, or for any violation of this article or of any order, decision, rule, regulation, direction, demand, or other requirement established by the state revenue commissioner may be brought in the county where the cause of action or some part thereof arose; and if the motor carrier or its agent shall not be found for service in the county where the action is instituted, a second original may be issued and service be made in any other county where the service can be made upon the motor carrier or its agent. The venue prescribed by this Code section shall be cumulative of any other venue provided by law.

(c) Except in those cases where the Constitution requires otherwise, for the purposes of venue only, any truck engaged exclusively in the transportation of agricultural or dairy products, or both, between farm, market, gin, warehouse, or mill shall not be classified as a motor common or contract carrier.

(d) (For effective date, see note.) (1) As used in this subsection, the term "covered farm vehicle" means a motor vehicle with a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,000 pounds or less; or a motor vehicle with a gross vehicle weight rating or gross vehicle weight that is greater than 26,000 pounds and which is traveling within the registered state or within 150 miles of the farm or ranch for which it is used. To qualify as a covered farm vehicle either type of motor vehicle listed in this paragraph must also be:

(A) Registered in this or another state;

(B) Operated by a farmer, rancher, or tenant under a crop share farm lease agreement or a family member or employee of a farmer, rancher, or crop share tenant;

(C) Used primarily for the transportation of farm supplies, crops, livestock, or farm machinery; and

(D) Not used in a for hire motor carrier operation; provided, however, that this requirement shall not apply to a motor vehicle operated under a tenant crop share agreement used primarily for transporting crops of the landlord.

(2) A covered farm vehicle is not a motor carrier; provided, however, that any motor vehicle required by federal law to be designated as either a covered farm vehicle or a motor carrier shall be so designated as required by federal law.

(3) A covered farm vehicle must be equipped with either a license plate or possess such other special designation issued by the state where such vehicle is registered and the license plate or special designation must indicate that such vehicle is a covered farm vehicle. (Code 1981, § 40-1-117, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, §§ 11, 12/HB 323.)

**Delayed effective date.** — Subsection (d), as set out above, becomes effective January 1, 2014. Until January 1, 2014, there is no subsection (d).

**The 2013 amendment,** effective July 1, 2013, in subsection (a), inserted “certificate or” near the beginning of the first sentence, and inserted “, return receipt requested,” near the end of the third sentence; substituted “may be issued” for “may issue” near the end of the first sen-

tence of subsection (b); and, effective January 1, 2014, added subsection (d). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date; provided, however, that Section 12 of this Act shall not be effective until January 1, 2014.”

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-618 and former O.C.G.A. §§ 46-7-17 and 46-7-62 are included in the annotations for this Code section.

**Strict construction of this Code section.** — The provisions of former Code 1933, § 68-618 as to service on nonresident motor carriers were in derogation of common law and were to be strictly construed. *Record Truck Line v. Harrison*, 109 Ga. App. 653, 137 S.E.2d 65, aff’d, 220 Ga. 289, 138 S.E.2d 578 (1964) (decided under former Code 1933, § 68-618).

Former Code 1933, § 68-618, being in derogation of the common law, will not be extended beyond the mode fixed by the

legislature and shall be strictly and literally construed. *Norris Candy Co. v. Dixie Hwy. Express, Inc.*, 102 Ga. App. 665, 117 S.E.2d 250 (1960) (decided under former Code 1933, § 68-618).

Former Code 1933, § 68-618, being in derogation of common-law and granting extraterritorial jurisdiction, must be strictly construed. *Taylor v. Jones*, 123 Ga. App. 476, 181 S.E.2d 506 (1971) (decided under former Code 1933, § 68-618).

**Code section was not mandatory.** — Former Code 1933, § 68-618 was not to be construed as mandatory as respected the venue of a tort action against a motor common carrier being in the county in which the cause of action originated. *De Loach v. Southeastern Greyhound Lines*,



49 Ga. App. 662, 176 S.E. 518 (1934) (decided under former Code 1933, § 68-618).

**Applicability of subsection (a).** — Provisions of subsection (a) of former Code 1933, § 68-618 were applicable only to those situations in which the cause of action arose out of the carrier's operations in this state. *Record Truck Line v. Harrison*, 110 Ga. App. 520, 139 S.E.2d 153 (1964) (decided under former Code 1933, § 68-618); *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-17).

**Venue of personal injury action.** — Even though a nonresident interstate motor common carrier was registered in Georgia and had a registered agent for service of process, venue of a personal injury action against the carrier and nonresident driver was proper only in the county in which the accident occurred, not where the carrier's registered office was maintained. *Southern Drayage, Inc. v. Williams*, 216 Ga. App. 721, 455 S.E.2d 418 (1995) (decided under former O.C.G.A. § 46-7-17).

**Payment of money determines applicability of subsection (a).** — In determining whether an entity is a "motor contract or common carrier" such that the substituted service provisions of subsection (a) of former O.C.G.A. § 46-7-17 and § 46-7-62(a) applied, the inquiry must focus on the payment of money for the transportation of the goods or people. *Ellerbe v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-17).

**Language refers to carrier operations upon highways of this state.** — When the words "motor common carrier" were used in subsection (a) of former Code 1933, § 68-618, the words referred to motor common carriers using the public highways of this state; and in providing that such nonresident motor common carrier shall designate an agent for service in this state upon whom service may be perfected "in any action or proceeding against such motor common carrier growing out of its carrier operations," it necessarily referred to carrier operations upon the highways of this state. *Record Truck*

*Line v. Harrison*, 220 Ga. 289, 138 S.E.2d 578 (1964) (decided under former Code 1933, § 68-618).

**Out-of-state accident.** — Georgia court had no personal jurisdiction over a trucking company licensed in Georgia as a nonresident motor common carrier, where it was undisputed that the traffic accident involving the trucking company occurred outside the State of Georgia. *Tuck v. Cummins Trucking Co.*, 171 Ga. App. 485, 320 S.E.2d 265 (1984) (decided under former O.C.G.A. § 46-7-62). *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-62).

**Burden of proving vehicle exempt from definition of "motor contract carrier".** — On the question of whether a carrier was a "motor contract carrier" subject to suit in the county of the accident pursuant to subsection (b) of former § 46-7-62 the burden of proof was on the truck owner to show that its truck came within the exemption from the definition of "motor contract carrier" found in former § 46-1-1(8)(c) and there was no burden on plaintiffs to prove that the truck was not within the exemption. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-62).

**Venue provision is permissive and cumulative.** — Former Code 1933, § 68-618 did not make mandatory the bringing of such action against a motor common carrier in the county where the cause of action originated, but was purely permissive and cumulative. *Harrison v. Neel Gap Bus Line*, 51 Ga. App. 120, 179 S.E. 871 (1935) (decided under former Code 1933, § 68-618).

**Venue provision inapplicable to vehicles of state or political subdivision.** — In action against county hospital authority and ambulance driver by automobile accident victim, the hospital authority was exempt from the venue provision of former O.C.G.A. § 46-7-17 under the exemption provided for vehicles operated by any state or subdivision thereof in former § 46-1-1(7)(C)(viii). *Calhoun County Hosp. Auth. v. Walker*, 205 Ga. App. 259, 421 S.E.2d 777 (1992), cert. denied, 205 Ga. App. 899, 421 S.E.2d 777

(1992) (decided under former O.C.G.A. § 46-7-17).

**Not all venue options applicable to nonresident carrier.** — Last sentence of subsection (b) of former O.C.G.A. § 46-7-17 did not mean that any and all venue provisions relative to an action against an insurer were applicable, at the election of the plaintiff, in a tort action against a motor carrier. What the sentence did mean was that the statute's venue provisions were not exclusive with regard to a suit against a motor carrier and that venue can be predicated upon any statute which was otherwise applicable. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-17).

**Venue in action arising out of transaction in this state against nonresident carrier.** — It was provided that an action against a nonresident motor common carrier may be brought in the county where the cause of action or some part thereof arose, this did not have the effect of restricting or limiting the venue in that respect; this provision contemplated an action arising out of a transaction in this state, but even then it did not require that the action be brought in the county where it arose. *Parker v. Ryder Truck Lines*, 150 Ga. App. 163, 257 S.E.2d 18 (1979) (decided under former Code 1933, § 68-618).

**Venue proper in county of registered office.** — In an action against a trucking company, venue was proper in the county in which the company had the company's office properly registered with the secretary of state, not in the county of residence of the company's designated registered agent for service of process. *Rock v. Ready Trucking, Inc.*, 218 Ga. App. 774, 463 S.E.2d 355 (1995) (decided under former O.C.G.A. § 46-7-17).

**Residence of foreign carrier where cause of action originated.** — Foreign motor common carrier, engaged in the business of trucking, hauling, and transporting freight over the various public highways within the state, and having designated a resident agent upon whom service of process can be made, under the clear mandate of former Code 1933, § 68-618, was, so far as the right to sue

was concerned, a resident of this state, and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county was concerned. *Southeastern Truck Lines v. Rann*, 214 Ga. 813, 108 S.E.2d 561 (1959) (decided under former Code 1933, § 68-618).

**Alternative venue for actions against carriers.** — Under former Code 1933, § 68-618, a motor carrier "may be" sued in the county where the cause of action originated or may be sued in the county where the carrier maintained the carrier's principal office and place of business, and this was so, regardless of whether the motor carrier had an agent in the jurisdiction wherein the cause of action originated. *Modern Coach Corp. v. Faver*, 87 Ga. App. 221, 73 S.E.2d 497 (1952).

**Permissible venue in county where cause of action originated despite residence of defendants.** — Motor common carrier may be a nonresident corporation, yet since the carrier is engaged in doing business in this state, and has agents in the state for that purpose, the carrier is a resident of this state and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county is concerned, and, being a resident of that county for the purpose of an action, a joint tort-feasor, notwithstanding that the joint tort-feasor may reside in another county of this state, may be sued jointly with the motor common carrier in the county in which the cause of action originated. *A.G. Boone Co. v. Owens*, 51 Ga. App. 739, 181 S.E. 519 (1935) (decided under former Code 1933, § 68-618).

A joint cause of action against a motor common carrier, which is a domestic corporation, against the carrier's servant and employee, and against the insurance carrier of the motor common carrier, a nonresident corporation with an agent for service in this state, for damages alleged to have been sustained by the negligent operation of the motor vehicle of the motor common carrier, may be brought in the county wherein the cause of action origi-

nated, although none of the defendants were residents of such county or have agents therein. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-618).

**Lack of agent in county where action originated does not preclude venue therein.** — Action against a motor common carrier, except when the Constitution of this state otherwise provides, may be brought and maintained in any county in this state in which the cause of action originated, for damages for an injury to person or property by the operation of the vehicles of such motor common carrier, although the carrier may not have an agent in that county upon whom service of the suit may be perfected. *A.G. Boone Co. v. Owens*, 51 Ga. App. 739, 181 S.E. 519 (1935) (decided under former Code 1933, § 68-618).

**Same venue principles applicable to carriers as to railroad companies.** — Under former Code 1933, § 94-1101, a joint and several action can be brought against a railroad company and another tort-feasor, and as against the railroad company and the company's employee, a conductor or engineer, and the suit can be brought in the county where the cause of action originated and service perfected by second original, and this was true even though neither defendant resided or had an agent in that county; the same principle was applicable to a suit against a motor common carrier and the driver of the carrier's motor vehicle for a tort. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-618).

**Venue as to nonresidents.** — Venue of action against nonresidents may be maintained under Ga. L. 1959, p. 120, § 1 (see O.C.G.A. § 40-12-3) as well as former Code 1933, § 68-618. *Parker v. Ryder Truck Lines*, 150 Ga. App. 163, 257 S.E.2d

18 (1979) (decided under former Code 1933, § 68-618).

**Conferring of qualified residence upon nonresident motor carrier.** — Former Code 1933, § 68-514 controlled qualified residence upon nonresident motor contract carrier for purposes of action such that a resident joint tortfeasor may be joined in an action against it in the county where the injury occurred although the joint tortfeasor was a nonresident of such county, and although the defendant corporation had no office or place of doing business therein. *Pate v. Brock*, 95 Ga. App. 594, 98 S.E.2d 404 (1957) (decided under former Code 1933, § 68-514).

**No misjoinder where proper action brought against parties.** — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver's employment as a driver for a common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was properly brought against the three named defendants, and there was no misjoinder. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-514).

**Cited in** *Lee v. Acme Freight Lines*, 54 F. Supp. 397 (S.D. Ga. 1944); *United Motor Freight Term. Co. v. Driver*, 74 Ga. App. 244, 39 S.E.2d 496 (1946); *American Fid. & Cas. Co. v. Farmer*, 77 Ga. App. 166, 48 S.E.2d 122 (1948); *Dependable Ins. Co. v. Gibbs*, 218 Ga. 305, 127 S.E.2d 454 (1962); *Delcher Bros. Storage Co. v. Ward*, 134 Ga. App. 686, 215 S.E.2d 516 (1975); *Dove v. National Freight, Inc.*, 138 Ga. App. 114, 225 S.E.2d 477 (1976); *Irving Com. Corp. v. Sound Floor Coverings, Inc.*, 595 F. Supp. 536 (N.D. Ga. 1984); *Gault v. National Union Fire Ins. Co.*, 208 Ga. App. 134, 430 S.E.2d 63 (1993); *Cooper v. Edwards*, 235 Ga. App. 48, 508 S.E.2d 708 (1998).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, § 287. 14 Am. Jur. 2d, Carriers, §§ 595, 1130.

**C.J.S.** — 61 C.J.S., Motor Vehicles, §§ 992 et seq., 1025, 1026.

**ALR.** — State regulation of carriers by



motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Constitutionality of statutes which permit action against trucking or bus com-

pany for injury to person or property to be brought in any county through or into which the route passes, and providing for the service of process in such cases, 81 ALR 777.

**40-1-118. Establishment of just and reasonable rates, fares, and charges for transportation.**

The commissioner shall prescribe just and reasonable rates, fares, and charges for transportation by motor carriers of household goods and for all services rendered by motor carriers in connection therewith. The tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the department may prescribe. Such tariffs shall also be subject to change on such notice and in such manner as the department may prescribe. In order to carry out the purposes of this Code section, including the publication and maintenance of just, reasonable, and nondiscriminatory rates and charges, the department shall establish a rate-making procedure for all carriers of household goods. Failure on the part of any motor carrier to comply with this Code section or the rules and regulations promulgated under this Code section may result in suspension or cancellation of said carrier's operating authority by the department. (Code 1981, § 40-1-118, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**JUDICIAL DECISIONS**

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-614 and former O.C.G.A. §§ 46-7-18 and 46-7-19 are included in the annotations for this Code section.

**Collective ratemaking activities by "rate bureaus" immune from anti-trust liability.** — Collective ratemaking activities carried on by "rate bureaus" composed of motor common carriers operating in several states, although not compelled by the states involved, "clearly ar-

ticulated state policy" and thus were immune from antitrust liability. *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36 (1985) (decided under former O.C.G.A. § 46-7-18).

**Cited** in *Myers v. Atlantic Greyhound Lines*, 52 Ga. App. 698, 184 S.E. 414 (1936); *United States v. Southern Motor Carriers Rate Conference*, 439 F. Supp. 29 (N.D. Ga. 1977); *Executive Town & Country Servs., Inc. v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 157, 158.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 187 et seq., 192 et seq.

### 40-1-119. Charges by motor carriers; unjust discrimination by carriers prohibited.

No motor carrier of household goods or passengers shall charge, demand, collect, or receive a greater or lesser or different compensation for the transportation of household goods or passengers or for any service rendered in connection therewith than the rates, fares, and charges prescribed or approved by order of the department; nor shall any such motor carrier unjustly discriminate against any person in its rates, fares, or charges for service. The commissioner may prescribe, by general order, to what persons motor carriers of passengers may issue passes or free transportation; may prescribe reduced rates for special occasions; and may fix and prescribe rates and schedules. (Code 1981, § 40-1-119, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 13/HB 323.)

**The 2013 amendment**, effective July 1, 2013, in this Code section in the first sentence, substituted “passengers” for “property” near the beginning, and substituted “household goods or passengers” for “property” near the middle; and substituted “passengers” for “household goods” in the middle of the second sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

### 40-1-120. Limiting baggage size for motor carrier’s passengers.

Motor carriers of passengers shall not be compelled to carry baggage of passengers, except hand baggage, the character, amount, and size of which the motor carrier may limit by its rules and regulations, subject to the approval of the department; and the department may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor carrier shall elect to carry the personal baggage of passengers, other than hand baggage, the department shall prescribe just and reasonable rates therefor and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor. (Code 1981, § 40-1-120, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-617 are included in the annotations for this Code section.

**Ignorance of commission rules no excuse.** — Rules of the commission made

pursuant to former Code 1933, § 68-617 were presumed to be known or ascertainable by the public, and ignorance thereof excused no one. *Myers v. Atlantic Greyhound Lines*, 52 Ga. App. 698, 184 S.E. 414 (1936) (decided under former Code 1933, § 68-617).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 14 Am. Jur. 2d, Carriers, §§ 1181, 1232, 1248 et seq.      **C.J.S.** — 60 C.J.S., Motor Vehicles, § 227.

40-1-121. Inspection of books and records.

The department shall prescribe the books and the forms of accounts to be kept by the holders of certificates under this part, which books and accounts shall be preserved for such reasonable time as may be prescribed by the department. The books and records of every certificate holder shall be at all times open to the inspection of any agent of the department for such purpose. The department shall have the power to examine the books and records of all motor carriers to whom it has granted certificates or permits to operate under this part and to examine under oath the officers and agents of any motor carrier with respect thereto. (Code 1981, § 40-1-121, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 31, 43, 91, 112, 113.      motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.  
**C.J.S.** — 60 C.J.S., Motor Vehicles, § 114 et seq.  
**ALR.** — State regulation of carriers by

40-1-122. Observing laws; schedule of operation.

Motor carriers shall observe the laws of this state in respect to size, weight, and speed of their vehicles. Intrastate motor carriers of passengers shall, and interstate motor carriers of passengers may, file with the department the schedules upon which they propose to operate their vehicles, which schedules shall be such that the net running time of vehicles between terminal points shall not exceed the lawful speed limit; and any motor carrier of passengers filing such a schedule shall be allowed to operate his or her vehicles on the highway at a rate of speed not exceeding the lawful speed limit in order to maintain a schedule so filed. (Code 1981, § 40-1-122, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-634 are included in the annotations for this Code section.      **Cited in** Folds v. Auto Mut. Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937); Atlantic Greyhound Corp. v. Loudermilk, 110 F.2d 596 (5th Cir. 1940).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 263, 265, 267, 284.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 24 et seq., 42 et seq., 105 et seq., 133 et seq., 162, 166.

**ALR.** — State regulation of carriers by motor vehicle as affected by interstate

commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway, 134 ALR 550.

**40-1-123. Enjoining operation of motor carriers.**

Any motor carrier which operates on the public highways of this state without the required certificate or permit, or after such certificate or permit has been canceled, or without having registered its vehicle or vehicles as provided for in this part, or which operates otherwise than is permitted by the terms of such certificate or permit or the laws of this state may be enjoined from operating on the public highways of this state upon the bringing of a civil action by the department, by a competing motor carrier or rail carrier, or by any individual. (Code 1981, § 40-1-123, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-124. Perpetual franchise over public highways prohibited.**

Nothing in this part or any other law shall be construed to vest in the owner, holder, or assignee of any certificate or permit issued under this part any vested right to use the public highways of this state and shall not be construed to give to any motor carrier any perpetual franchise over such public highways. (Code 1981, § 40-1-124, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

## JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-631 are included in the annotations for this Code section.

**No certificate holder acquires vested right or perpetual franchise.**

— No holder of a certificate of public convenience and necessity issued by the commission shall acquire any vested right to use the public roads or any perpetual franchises. *Bass v. Georgia Public-Service Comm'n*, 192 Ga. 106, 14 S.E.2d 740 (1941) (decided under former Code 1933, § 68-631).

**No right to review of commission order by writ of certiorari.** — After a

certificate of public convenience and necessity had been granted by the commission to a motor common carrier, and thereafter, by order of the commission, and after a hearing such certificate was revoked and canceled because the evidence adduced at such hearing showed that such motor common carrier had abandoned the passenger service along the route in question, the motor common carrier, whose certificate of public convenience had thus been revoked and canceled by the commission did not have the right to review such judgment or order of the commission by the writ of certiorari in the superior court having jurisdiction. *Southeastern Greyhound Lines v. Georgia Pub. Serv.*

Comm'n, 181 Ga. 75, 181 S.E. 834 (1935) **Cited** in *Coleman v. Drake*, 183 Ga. (decided under former Code 1933, 682, 188 S.E. 897 (1936). § 68-631).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d., Carriers, §§ 125 et seq., 148, 149, 151.

#### **40-1-125. Hearing upon suspension or revocation of motor carrier certificate; judicial review.**

(a) Upon issuance by the commissioner of an order suspending or revoking a motor carrier certificate, such motor carrier shall be afforded a hearing to be held in accordance with the procedures set forth in Code Section 40-1-56.

(b) Any person whose motor carrier certificate has been suspended or revoked and who has exhausted all administrative remedies available within the Department of Public Safety is entitled to judicial review in accordance with Code Section 40-1-56. (Code 1981, § 40-1-125, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-126. Carriers engaged in interstate and intrastate commerce.**

In circumstances where a motor carrier is engaged in both interstate and intrastate commerce, it shall nevertheless be subject to all the provisions of this part so far as it separately relates to commerce carried on exclusively in this state. It is not intended that the department shall have the power of regulating the interstate commerce of such motor carrier, except to the extent expressly authorized by this part as to such commerce. The provisions of this part do not apply to purely interstate commerce nor to carriers exclusively engaged in interstate commerce. When a motor carrier is engaged in both intrastate and interstate commerce, it shall be subject to all the provisions of this part so far as they separately relate to commerce carried on in this state. (Code 1981, § 40-1-126, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

### JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-633 and former O.C.G.A. § 46-7-36 are included in the annotations for this Code section.

**Direct action against insurers of**

**interstate carriers allowed.** — Proper interpretation of the provision in former Code 1933, § 68-612 allowing for direct actions against insurance carriers, in conjunction with former Code 1933, § 68-633, was that the statute applied to interstate carriers as well as intrastate carriers.

Kimberly v. Bankers & Shippers Ins. Co., 490 F. Supp. 93 (N.D. Ga. 1980) (decided under former Code 1933, § 68-633).

**Cause of action for tort occurring out-of-state.** — Since, under former O.C.G.A. § 46-7-16(e), a certificate and bond or insurance was not required at all when carrier was engaged solely in interstate commerce over the public highways of Georgia, the certificate of convenience

which permitted joinder of the insurer in a suit against a carrier “subject to action” in Georgia applied specifically to causes of action for a tort which occurred on public highways of other states. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-36).

**Cited in** *Record Truck Line v. Harrison*, 220 Ga. 289, 138 S.E.2d 578 (1964).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, § 36 et seq.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 174 et seq., 179 et seq., 192 et seq., 226.

**ALR.** — State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

### 40-1-127. Actions for recovery of overcharges; rates, charges, and claims for loss or damage.

(a) All actions at law against motor carriers operating in this state, which actions seek to recover overcharges accruing on intrastate shipments, shall be initiated within a period of three years after the time the cause of action accrues, and not thereafter, provided that, if a claim for the overcharge is presented in writing to the carrier within the three-year period of limitation, the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim or any part thereof.

(b) A motor carrier of property may, upon notice to the commissioner of public safety, elect to be subject to the following requirements regarding rates, charges, and claims for loss or damage:

(1) A motor carrier of property shall provide to the shipper, upon request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate agreed to between the shipper and carrier may have been based. When the applicability or reasonableness of the rates and related provisions billed by a carrier is challenged by the person paying the freight charges, the commissioner of public safety shall determine whether such rates and provisions are reasonable or applicable based on the record before it. In cases where a carrier other than a carrier providing transportation of household goods seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the commissioner of public safety determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the original bill in order to have the right to collect such charges;



(2) If a shipper seeks to contest the charges originally billed by a motor carrier of property, the shipper may request that the commissioner of public safety determine whether the charges originally billed must be paid. A shipper must contest the original bill within 180 days in order to have the right to contest such charges; and

(3) Claims for loss of or damage to property for which any motor carrier of property may be liable must be filed within nine months after the delivery of the property, except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed.

(c) The commissioner of public safety shall adopt rules regarding rates, charges, and claims for loss or damage applicable to carriers of household goods. (Code 1981, § 40-1-127, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-128. Accepting or receiving rebates or drawbacks; prima-facie evidence of intentional violation; burden of claiming exception.**

(a) Any officer, agent, or employee of any corporation, and any other person, who knowingly accepts or receives any rebate or drawback from the rates, fares, or charges established or approved by the department for motor carriers of passengers or household goods, or who procures, aids, or abets therein, or who uses or accepts from such motor carrier any free pass or free transportation not authorized or permitted by law or by the orders, rules, or regulations of the department, or who procures, aids, or abets therein, shall be guilty of a misdemeanor.

(b) The possession of goods, wares, or merchandise loaded on a motor vehicle consigned to any person, firm, or corporation, being transported or having been transported over the public highways in this state, without the authority of a permit or certificate for so transporting having been issued by the department under this article, shall be prima-facie evidence that such transportation of such goods, wares, or merchandise was an intentional violation of the law regulating the transportation of persons and property over the public highways in this state.

(c) Any person claiming the benefit of any exception made in this article shall have the burden of proving that he or she falls within the exception. (Code 1981, § 40-1-128, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**Cross references.** — Prohibition against rebates, Ga. Const. 1983, Art. III, Sec. VI, Para. V.

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's note.** — In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-38 are included in the annotations for this Code section.

**Intent of Code sections prescribing penalties for violations of laws concerning motor common and contract**

**carriers.** — Former O.C.G.A. § 46-7-38 and O.C.G.A. §§ 32-1-10, 32-6-23 and 32-6-24 were intended to promote the safety of the traveling public and protect the public's investment in public roads and highways. 1981 Op. Att'y Gen. No. U81-17 (decided under former O.C.G.A. § 46-7-38).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Carriers, §§ 285, 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

**C.J.S.** — 13 C.J.S., Carriers, §§ 333, 335, 336, 346, 355, 61A C.J.S., Motor Vehicles, § 1311 et seq.

### 40-1-129. Fines for violating certificate requirement; advertising services without certificate.

(a) Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person, firm, or corporation is operating as a household goods carrier for hire without a valid certificate issued by the department or is holding itself out as such a carrier without such a certificate in violation of this part, the department may impose a fine of not more than \$5,000.00 for each violation. The department may assess the person, firm, or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the department. The department may also assess interest at the rate specified in Code Section 40-1-56 on any fine or assessment imposed, to commence on the day the fine or assessment becomes delinquent. All fines, assessments, and interest collected by the department shall be paid into the general fund of the state treasury. Any party aggrieved by a decision of the department under this subsection may seek judicial review as provided in Code Section 40-1-56.

(b) Any person, firm, or corporation who knowingly and willfully issues, publishes, or affixes or causes or permits the issuance, publishing, or affixing of any oral or written advertisement, broadcast, or other holding out to the public, or any portion thereof, that the person, firm, or corporation is in operation as a household goods carrier for hire without having a valid certificate issued by the department is guilty of a misdemeanor. Any fine or assessment imposed by the department pursuant to the provisions of subsection (a) of this Code section shall not bar criminal prosecution pursuant to the provisions of this subsection. (Code 1981, § 40-1-129, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2013 amendment,** effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the last sentence of subsection (a).

**40-1-130. Inclusion of motor carrier authorization number in advertising.**

In any advertisement for a motor carrier, whether by print, radio, television, other broadcast, or electronic media including but not limited to Internet advertising and any listing or sites on any website, the motor carrier shall include the motor carrier authorization number issued to it by the Department of Public Safety. The requirements of this Code section shall not apply to nonconsensual towing motor carriers providing services pursuant to Code Section 44-1-13. The department shall be required to issue a motor carrier authorization number to each registered motor carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than \$500.00 for an initial violation and not more than \$15,000.00 for a second or subsequent violation. (Code 1981, § 40-1-130, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**PART 3**

**GEORGIA LIMOUSINE CARRIERS**

**40-1-150. Short title.**

This part shall be known and may be cited as the “Georgia Limousine Carrier Act.” (Code 1981, § 40-1-150, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-151. Definitions.**

As used in this part, the term:

(1) “Certificate” or “limousine carrier certificate” means a certificate issued by the department for the operation of limousines or limousine services under this part and such certificates issued by the Public Service Commission on or before June 30, 2012.

(2) “Chauffeur” means any person with a Georgia state driver’s license who meets the qualifications as prescribed in this part and who is authorized by the commissioner of driver services to drive a motor vehicle of a limousine carrier as provided in paragraph (5) of this Code section.



(3) “Department” means the Department of Public Safety.

(4) “Limousine” means any motor vehicle that meets the manufacturer’s specifications for a luxury limousine with a designed seating capacity for no more than ten passengers and with a minimum of five seats located behind the operator of the vehicle, and which does not have a door at the rear of the vehicle designed to allow passenger entry or exit; further, no vehicle shall be permitted to be operated both as a taxicab and a limousine.

(5) “Limousine carrier” means any person owning or operating a prearranged service regularly rendered to the public by furnishing transportation as a motor carrier for hire, not over fixed routes, by means of one or more unmetered:

(A) Limousines;

(B) Extended limousines;

(C) Sedans;

(D) Extended sedans;

(E) Sport utility vehicles;

(F) Extended sport utility vehicles;

(G) Other vehicles with a capacity for seating and transporting no more than 15 persons for hire including the driver; or

(H) Any combination of subparagraphs (A) through (G) of this paragraph on the basis of telephone contract or written contract. A limousine carrier shall not use per capita rates or charges.

(6) “Person” means any individual, firm, partnership, private or public corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(7) “Public highway” means every public street, road, highway, or thoroughfare of any kind in this state.

(8) “Vehicle” or “motor vehicle” means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner. (Code 1981, § 40-1-151, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 14/HB 323.)

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “paragraph (5) of this Code section” for “paragraph (5) below” at the end of paragraph (2). The

second 2013 amendment, effective July 1, 2013, substituted “commissioner” for “commission” at the end of paragraph (8). See editor’s note for applicability.

**Editor’s notes:** — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

#### **40-1-152. Operation in accordance with provisions; certificate for limousine carrier required.**

(a) No limousine carrier shall operate any motor vehicle owned or operated by a limousine carrier for the transportation of passengers for compensation on any public highway in this state except in accordance with the provisions of this article.

(b) No person may engage in the business of a limousine carrier over any public highway in this state without first having obtained from the department a certificate to do so. (Code 1981, § 40-1-152, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-153. Application form for limousine carriers; issuance to qualified applicants.**

(a) The department shall prescribe the form of the application for a limousine carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its judgment, be necessary and may establish fees as part of such certificate process.

(b) A limousine carrier certificate shall be issued to any qualified applicant, provided that such applicant is a limousine carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle. (Code 1981, § 40-1-153, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-154. Regulation of carriers on safety of equipment; annual inspections.**

(a) It shall be the duty of the department to regulate limousine carriers with respect to the safety of equipment.

(b) The department shall require safety and mechanical inspections at least on an annual basis for each vehicle owned or operated by a limousine carrier. The department shall provide, by rule or regulation,

for the scope of such inspections, the qualifications of persons who may conduct such inspections, and the manner by which the results of such inspections shall be reported to the department.

(c) In addition to the requirements of this Code section, limousine carriers shall comply with the applicable provisions of Code Section 40-1-8. (Code 1981, § 40-1-154, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-155. Transferring or encumbering certificates.**

No limousine carrier certificate issued under this part may be leased, assigned, or otherwise transferred or encumbered unless authorized by the department. (Code 1981, § 40-1-155, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-156. Grounds for cancellation, revocation, or suspension of limousine carrier certificate.**

(a) The department may cancel, revoke, or suspend any limousine carrier certificate issued under this part on any of the following grounds:

- (1) The violation of any of the provisions of this part;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the department;
- (3) Failure of a limousine carrier to pay a fee imposed on the carrier within the time required by law or by the department;
- (4) Failure of a limousine carrier to maintain required insurance in full force and effect; and
- (5) Failure of a limousine carrier to operate and perform reasonable services.

(b) After the cancellation or revocation of a certificate or during the period of its suspension, it is unlawful for a limousine carrier to conduct any operations as such a carrier. (Code 1981, § 40-1-156, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-157. Validity of certificates.**

Limousine certificates shall be valid unless suspended, revoked, or canceled by the commissioner, or surrendered to the commissioner by the holder. (Code 1981, § 40-1-157, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)



**The 2013 amendment,** effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the middle of this Code section.

**40-1-158. Limousine chauffeur authorization and license endorsement.**

Pursuant to rules and regulations prescribed by the commissioner of driver services, each chauffeur employed by a limousine carrier shall secure from the Department of Driver Services a limousine chauffeur authorization and license endorsement. (Code 1981, § 40-1-158, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-159. Fees upon initial application.**

The commissioner shall collect the following one-time fees upon initial application of a limousine carrier pursuant to this part:

- (1) A fee of \$75.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six limousines;
- (2) A fee of \$150.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 limousines;
- (3) A fee of \$200.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 limousines; and
- (4) A fee of \$75.00 to accompany each application for transfer of a certificate. (Code 1981, § 40-1-159, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**JUDICIAL DECISIONS**

**Editor’s notes.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, are included in the annotations for this Code section.

**Fees charged are in nature of tax.** — Fees charged motor carriers for certificate of public convenience and necessity and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use, for the purpose of gain, of the highways. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 59, 74, 80 et seq. 13 Am. Jur. 2d, Carriers, §§ 148, 149, 151.

**C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 244, 245 et seq.

**40-1-160. Transportation of persons under age 21 drinking alcohol.**

Any limousine carrier subject to the jurisdiction of the commissioner that transports passengers shall comply with the provisions of paragraph (1) of subsection (a) of Code Section 3-3-23 and Code Section 3-9-6, concerning consumption of alcoholic beverages. The commissioner shall provide to all such limousine carriers, at the time of registration a certificate, an informational packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the limousine carrier. (Code 1981, § 40-1-160, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**40-1-161. Revocation, alteration, or amendment of limousine certificate.**

The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any limousine certificate issued under this part, or under prior law, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the certificate is not furnishing adequate service. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act” and the provisions of Code Section 40-1-56. (Code 1981, § 40-1-161, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 15/HB 323.)

**The 2013 amendment,** effective July 1, 2013, added the second sentence in this Code section. See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, the subsection (a) designation was deleted as there was no subsection (b).

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

**40-1-162. State regulates limousine carriers.**

The State of Georgia fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this part; provided, however, that the governing authority of any county or municipal airport shall be authorized to permit any limousine carrier doing business at any such airport and may establish fees as part of such permitting process; provided, further, that such fees shall not exceed

the airport's approximate cost of permitting and regulating limousine carriers; and provided, further, that such governing authorities of such airports shall accept a chauffeur's endorsement issued by the Department of Driver Services to the driver and evidence of a certificate issued to the limousine carrier by the Department of Public Safety as adequate evidence of sufficient criminal background investigations and shall not require any fee for any further criminal background investigation. The list of licensed limousine carriers on the website of the Department of Public Safety shall be sufficient evidence that a limousine carrier has a certificate issued by the Department of Public Safety. (Code 1981, § 40-1-162, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-163. Rates and charges.**

(a) Notwithstanding the powers granted to the department regarding tariffs of other motor carriers, the department is not authorized to set, adjust, or change rates or charges for transportation of passengers, property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier.

(b) Any tariff issued by the department that exists as of June 30, 2007, that regulates the rates or charges for transportation of passengers, property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier shall be void. (Code 1981, § 40-1-163, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 16/HB 323.)

**The 2013 amendment**, effective July 1, 2013, substituted "Code Section 40-1-151" for "Code Section 40-1-118" near the end of subsections (a) and (b). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

#### **40-1-164. Notice and opportunity to be heard by carriers.**

Before the department shall enter any order, regulation, or requirement directed against any limousine carrier, such carrier shall first be given reasonable notice and an opportunity to be heard on the matter. (Code 1981, § 40-1-164, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-165. Motor carrier authorization number of limousine carriers included in advertisement.**

In any advertisement for a limousine carrier, whether by print, radio, television, other broadcast, or electronic media including but not



limited to Internet advertising and any listing or sites on any website, the limousine carrier shall include the motor carrier authorization number issued to it by the Department of Public Safety. The department shall be required to issue a motor carrier authorization number to each registered limousine carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than \$500.00 for an initial violation and not more than \$15,000.00 for a second or subsequent violation. (Code 1981, § 40-1-165, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-166. Commercial indemnity and liability insurance.**

Each limousine carrier shall obtain and maintain commercial indemnity and liability insurance with an insurance company authorized to do business in this state which policy shall provide for the protection of passengers and property carried and of the public against injury proximately caused by the negligence of the limousine carrier, its servants, and its agents. The minimum amount of such insurance shall be:

(1) For capacity of 12 passengers or less, \$300,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of \$100,000.00 for bodily injuries to or death of one person, and \$50,000.00 for loss of damage in any one accident to property of others, excluding cargo; or

(2) For capacity of more than 12 passengers, \$500,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of \$100,000.00 for bodily injuries to or death of one person, and \$50,000.00 for loss of damage in any one accident to property of others, excluding cargo. (Code 1981, § 40-1-166, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-167. Required information on license plates of limousines.**

Each limousine carrier which registers any vehicle under this article shall, for each such certificated vehicle, affix to the center of the front bumper of each such certificated vehicle a standard size license plate bearing the following information:

- (1) Limousine carrier name;
- (2) City and state of principal domicile;
- (3) Company telephone number; and

(4) Motor carrier identification number if the limousine carrier is a commercial motor carrier or motor carrier authorization number

issued by the department if the limousine carrier is a lightweight commercial vehicle.

The cost for such license plate shall be the sole responsibility of the limousine carrier and must be placed on each certificated vehicle prior to such vehicle being placed in service. (Code 1981, § 40-1-167, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 17/HB 323.)

**The 2013 amendment**, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “Each limousine carrier which registers any vehicle under this article shall, for each such certificated vehicle, affix to the center of the front bumper of each such certificated vehicle a standard size license plate bearing the following information: (1) limousine carrier name, (2) city and state of principal domicile, (3) company telephone number,

and (4) the vehicle classification, IE-1. The cost for such license plate shall be the sole responsibility of the limousine carrier and must be placed on each certificated vehicle prior to said vehicle being placed in service.” See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

#### **40-1-168. Local taxation of limousine carriers prohibited.**

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a limousine carrier to operate equipment, or on the equipment, or on any incidents of the business of a limousine carrier. (Code 1981, § 40-1-168, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

#### **40-1-169. Enforcement.**

The department is authorized to enforce the provisions of this part. Additionally, the department may hear a petition by a third party asserting that a limousine carrier has violated Code Section 40-1-152 and may impose the penalties and seek the remedies set out in Code Section 40-1-56 if the department finds such a violation. (Code 1981, § 40-1-169, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, in the second sentence, “Code Section” was in-

serted twice and “of this title” was deleted following “40-1-56”.

#### **40-1-170. Application to every vehicle controlled by limousine carrier.**

The provisions of this part and the powers granted to the department by this part to regulate limousine carriers shall apply to every vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier. (Code 1981, § 40-1-170, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

CHAPTER 2

REGISTRATION AND LICENSING OF MOTOR VEHICLES

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- 40-2-86.1. Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations — Plates to identify persons with diabetes, honor veterans of the armed services, and honor the Georgia Association of Realtors.

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- 40-2-88. Reciprocal agreements for registration of commercial vehicles on apportionment basis; waiver of penalties.

Article 6A

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- 40-2-140. (For effective date, see note.)



Sec. Department of Public Safety to administer provisions of this article; registration and fee requirements; evidence of continuing education; requirements for obtaining operating authority; collection, retention, and utilization of fees; regulatory compliance inspections; penalties.

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**Article 7**

**Motor Vehicle License Fees and Classes**

40-2-152. Fees for apportionable vehi-

**ARTICLE 1**

**GENERAL PROVISIONS**

**40-2-1. Definitions.**

As used in this chapter, the term:

(1) "Cancellation of vehicle registration" means the annulment or termination by formal action of the department of a person's vehicle registration because of an error or defect in the registration or because the person is no longer entitled to such registration. The cancellation of registration is without prejudice and application for a new registration may be made at any time after such cancellation.

(2) "Commissioner" means the state revenue commissioner.

(3) "Department" means the Department of Revenue.

(4) "Motor carrier" means:

(A) Any entity subject to the terms of the Unified Carrier Registration Agreement pursuant to 49 U.S.C. Section 14504a whether engaged in interstate or intrastate commerce, or both; or

(B) Any entity defined by the commissioner or commissioner of public safety who operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both.

(5) "Operating authority" means the registration required by 49 U.S.C. Section 13902, 49 C.F.R. Part 365, 49 C.F.R. Part 368, and 49 C.F.R. Section 392.9a.

(6) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo,

packages, records, books, or supporting documentation kept or required to be kept in the normal course of motor carrier business or enterprise operations.

(7) “Resident” means a person who has a permanent home or domicile in Georgia and to which, having been absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that any person who, except for infrequent, brief absences, has been present in the state for 30 or more days is a resident.

(8) “Revocation of vehicle registration” means the termination by formal action of the department of a vehicle registration, which registration shall not be subject to renewal or reinstatement, except that an application for a new registration may be presented and acted upon by the department after the expiration of the applicable period of time prescribed by law.

(9) “Suspension of vehicle registration” means the temporary withdrawal by formal action of the department of a vehicle registration, which temporary withdrawal shall be for a period specifically designated by the department. (Code 1981, § 40-2-1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 327, § 1; Ga. L. 2000, p. 951, § 3-1; Ga. L. 2002, p. 1024, § 1; Ga. L. 2005, p. 334, § 14-1/HB 501; Ga. L. 2009, p. 629, § 1/HB 57; Ga. L. 2012, p. 580, § 8/HB 865.)

**The 2012 amendment**, effective July 1, 2012, in subparagraph (4)(B), substituted “commissioner or commissioner of public safety” for “commissioner, commissioner of public safety, or Public Service Commission”, and deleted “, Title 46,” following “Section 390.5”.

#### **40-2-6. Alteration of license plates; operation of vehicle with altered or improperly transferred plate.**

### **JUDICIAL DECISIONS**

**Cited in** Hernandez-Lopez v. State, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

#### **40-2-8. Operation of unregistered vehicle or vehicle without current license plate, revalidation decal, or county decal; storage of unlicensed vehicle; jurisdiction; display of temporary plate; revision and extension of temporary plate; disposition of fines.**

(a) Any person owning or operating any vehicle described in Code Section 40-2-20 on any public highway or street without complying with that Code section shall be guilty of a misdemeanor, provided that a person shall register his or her motor vehicle within 30 days after

becoming a resident of this state. Any person renting, leasing, or loaning any vehicle described in Code Section 40-2-20 which is being used on any public highway or street without complying with that Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of \$100.00 for each violation; and each day that such vehicle is operated in violation of Code Section 40-2-20 shall be deemed to be a separate and distinct offense.

(b)(1) Any vehicle operated in the State of Georgia which is required to be registered and which does not have attached to the rear thereof a numbered license plate and current revalidation decal affixed to a corner or corners of the license plate as designated by the commissioner, if required, shall be stored at the owner's risk and expense by any law enforcement officer of the State of Georgia, unless such operation is otherwise permitted by this chapter.

(2)(A) It shall be a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid numbered license plate properly validated, unless such operation is otherwise permitted under this chapter; and provided, further, that the purchaser of a new vehicle or a used vehicle from a dealer of new or used motor vehicles who displays a temporary plate issued as provided by subparagraph (B) of this paragraph may operate such vehicle on the public highways and streets of this state without a current valid license plate during the period within which the purchaser is required by Code Section 40-2-20. An owner acquiring a motor vehicle from an entity that is not a new or used vehicle dealer shall register such vehicle as provided for in Code Section 40-2-29 unless such vehicle is to be registered under the International Registration Plan pursuant to Article 3A of this chapter.

(B)(i) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless such vehicle is to be registered under the International Registration Plan, a temporary plate as provided for by department rules or regulations which may bear the dealer's name and location and shall bear the expiration date of the period within which the purchaser is required by Code Section 40-2-20 to register such vehicle. The expiration date of such a temporary plate may be revised and extended by the county tag agent upon application by the dealer, the purchaser, or the transferee if an extension of the purchaser's initial registration period has been granted as provided by Code Section 40-2-20. Such temporary plate shall not resemble a license plate issued by this state and shall be issued without charge or fee. The requirements of this subparagraph do not apply to a dealer whose primary business is the sale of salvage motor vehicles and other vehicles on which total loss claims have been paid by insurers.



(ii) All temporary plates issued by dealers to purchasers of vehicles shall be of a standard design prescribed by regulation promulgated by the department. The department may provide by rule or regulation for the sale and distribution of such temporary plates by third parties in accordance with paragraph (3) of this subsection.

(3) All sellers and distributors of temporary license plates shall maintain an inventory record of temporary license plates by number and name of the dealer.

(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the penalties enumerated in this subsection.

(c) It shall be unlawful and punishable as for a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid county decal designating the county where the vehicle was last registered, unless such operation is otherwise permitted under this chapter. Any person convicted of such offense shall be punished by a fine of \$25.00 for a first offense and \$100.00 for a second or subsequent such offense. However, a county name decal shall not be required if there is no space provided for a county name decal on the current license plate. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 2; Code 1933, §§ 68-214, 68-9901; Ga. L. 1943, p. 341, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1969, p. 266, § 3; Ga. L. 1977, p. 1039, § 1; Ga. L. 1980, p. 746, § 1; Ga. L. 1981, p. 714, § 4; Ga. L. 1982, p. 1584, §§ 2, 5; Ga. L. 1986, p. 1053, § 1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2785, § 1.3; Ga. L. 1993, p. 1260, § 1; Ga. L. 1995, p. 809, § 1; Ga. L. 1996, p. 1118, § 1; Ga. L. 1997, p. 419, § 3; Ga. L. 1998, p. 1179, § 3; Ga. L. 2000, p. 523, § 1; Ga. L. 2001, p. 1173, § 1-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 321, § 1/HB 455; Ga. L. 2005, p. 334, § 14-2/HB 501; Ga. L. 2010, p. 143, § 2/HB 1005; Ga. L. 2011, p. 479, § 10.1/HB 112; Ga. L. 2012, p. 804, § 1/HB 985; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2012 amendment**, effective July 1, 2012, in division (b)(2)(B)(i), deleted “unless at such time the purchaser makes application to transfer to such vehicle in accordance with this chapter a valid license plate issued to him or her or” preceding “unless such vehicle is to be registered” in the first sentence, substituted “upon application by the dealer, the pur-

chaser, or the transferee” for “only” in the second sentence, and deleted the former fourth sentence which read: “Such temporary plate shall be surrendered to the tag agent at the time the vehicle is registered, and the tag agent shall destroy such temporary plate.”; and deleted the former first sentence of paragraph (b)(3), which read: “All sellers and distributors of temporary

license plates shall register with the department and shall be assigned a distinct identifier by the department.”

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, substituted “charge or fee” for “charge or fee therefore” in the next to last sentence of division (b)(2)(B)(i).

#### **40-2-9. Space for county name decal; display of “In God We Trust” decal in lieu of county name decal.**

(a) Any special, distinctive, or prestige license plate, except those provided for in Code Sections 40-2-61, 40-2-62, 40-2-74, 40-2-82, and 40-2-85.1 or as otherwise expressly provided in this chapter, shall contain a space for a county name decal. The provisions of this chapter relative to county name decals shall be applicable to all such license plates.

(b) The department shall make available to all license plates recipients a decal with the same dimensions as the county name decal that contains the words, “In God We Trust.” The department shall provide such decal free of charge to any person requesting it. Such decal may be displayed in the space reserved for the county name decal in lieu of the county name decal. (Code 1981, § 40-2-77, enacted by Ga. L. 1985, p. 261, § 8; Ga. L. 1986, p. 1333, § 5; Ga. L. 1989, p. 1186, § 4; Code 1981, § 40-2-81, as redesignated by Ga. L. 1990, p. 2048, § 2; Code 1981, § 40-2-9, as redesignated by Ga. L. 2001, p. 479, § 3; Ga. L. 2008, p. 835, § 1/SB 437; Ga. L. 2010, p. 9, § 1-64/HB 1055; Ga. L. 2010, p. 143, § 2.1/HB 1005; Ga. L. 2012, p. 1070, § 1/SB 293.)

**The 2012 amendment**, effective July 1, 2012, substituted “provide such decal free of charge to any person requesting it” for “charge to any person requesting such decal no more than the cost to the department for the manufacture and distribution of such decal” in the second sentence of subsection (b). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date.”

## **ARTICLE 2**

### **REGISTRATION AND LICENSING GENERALLY**

#### **40-2-20. Registration and license requirements; extension of registration period; penalties.**

(a)(1)(A) Except as provided in subsection (b) of this Code section and subsection (a) of Code Section 40-2-47, every owner of a motor vehicle, including a tractor or motorcycle, and every owner of a trailer shall, during the owner’s registration period in each year, register such vehicle as provided in this chapter and obtain a

license to operate it for the 12 month period until such person's next registration period.

(B)(i) The purchaser or other transferee owner of every new or used motor vehicle, including tractors and motorcycles, or trailer shall register such vehicle as provided in Code Section 40-2-8 and obtain or transfer as provided in this chapter a license to operate it for the period remaining until such person's next registration period which immediately follows such initial registration period, without regard to whether such next registration period occurs in the same calendar year as the initial registration period or how soon such next registration period follows the initial registration period; provided, however, that this registration and licensing requirement does not apply to a dealer which acquires a new or used motor vehicle and holds it for resale. The commissioner may provide by rule or regulation for one 30 day extension of such initial registration period which may be granted by the county tag agent if the transferor has not provided such purchaser or other transferee owner with a title to the motor vehicle more than five business days prior to the expiration of such initial registration period. The county tag agent shall grant an extension of the initial registration period when the transferor, purchaser, or transferee can demonstrate by affidavit in a form provided by the commissioner that title has not been provided to the purchaser or transferee due to the failure of a security interest or lienholder to timely release a security interest or lien in accordance with Code Section 40-3-56.

(ii) No person, company, or corporation, including, but not limited to, used motor vehicle dealers and auto auctions, shall sell or transfer a motor vehicle without providing to the purchaser or transferee of such motor vehicle the last certificate of registration on such vehicle at the time of such sale or transfer; provided, however, that in the case of a salvage motor vehicle or a motor vehicle which is stolen but subsequently recovered by the insurance company after payment of a total loss claim, the salvage dealer or insurer, respectively, shall not be required to provide the certificate of registration for such vehicle; and provided, further, that in the case of a repossessed motor vehicle or a court ordered sale or other involuntary transfer, the lienholder or the transferor shall not be required to provide the certificate of registration for such vehicle but shall, prior to the sale of such vehicle, surrender the license plate of such vehicle to the commissioner or the county tag agent by personal delivery or by certified mail or statutory overnight delivery for cancellation.

(2) An application for the registration of a motor vehicle may not be submitted separately from the application for a certificate of title



for such motor vehicle, unless a certificate of title has been issued in the owner's name, has been applied for in the owner's name, or the motor vehicle is not required to be titled. An application for a certificate of title for a motor vehicle may be submitted separately from the application for the registration of such motor vehicle.

(b) Subsection (a) of this Code section shall not apply:

(1) To any motor vehicle or trailer owned by the state or any municipality or other political subdivision of this state and used exclusively for governmental functions except to the extent provided by Code Section 40-2-37;

(2) To any tractor or three-wheeled motorcycle used only for agricultural purposes;

(2.1) To any vehicle or equipment used for transporting cargo or containers between and within wharves, storage areas, or terminals within the facilities of any port under the jurisdiction of the Georgia Ports Authority when such vehicle or equipment is being operated upon any public road not part of The Dwight D. Eisenhower System of Interstate and Defense Highways by the owner thereof or his or her agent within a radius of ten miles of the port facility of origin and accompanied by an escort vehicle equipped with one or more operating amber flashing lights that are visible from a distance of 500 feet;

(3) To any trailer which has no springs and which is being employed in hauling unprocessed farm products to their first market destination;

(4) To any trailer which has no springs, which is pulled from a tongue, and which is used primarily to transport fertilizer to a farm;

(5) To any motorized cart; or

(6) To any moped.

(c) Any person who fails to register a new or used motor vehicle as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$100.00. (Ga. L. 1927, p. 226, § 3; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 1; Code 1933, § 68-201; Ga. L. 1943, p. 341, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 392, § 2; Ga. L. 1957, p. 590, § 1; Ga. L. 1960, p. 777, § 1; Ga. L. 1966, p. 252, § 1; Ga. L. 1969, p. 266, § 1; Ga. L. 1973, p. 595, § 2; Ga. L. 1973, p. 781, § 1; Ga. L. 1974, p. 414, § 1; Ga. L. 1974, p. 451, § 1; Ga. L. 1978, p. 2241, § 2; Ga. L. 1984, p. 603, § 1; Ga. L. 1984, p. 1329, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 1053, § 2; Ga. L. 1987, p. 949, § 1; Ga. L. 1990, p. 1657, § 3; Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1260, § 2; Ga. L. 1994, p. 352, § 1; Ga. L. 1995, p. 809, § 2; Ga. L. 1996, p. 1118, § 2; Ga. L. 1997, p. 419,

§ 4; Ga. L. 1998, p. 1179, § 4; Ga. L. 1999, p. 81, § 40; Ga. L. 1999, p. 784, § 1; Ga. L. 2000, p. 136, § 40; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 1173, § 1-2; Ga. L. 2002, p. 506, § 3; Ga. L. 2002, p. 512, § 4; Ga. L. 2009, p. 449, § 1/SB 128; Ga. L. 2010, p. 143, § 3/HB 1005; Ga. L. 2012, p. 804, § 2/HB 985.)

**The 2012 amendment**, effective July 1, 2012, in division (a)(1)(B)(i), deleted “to a purchaser or other transferee owner”

following “granted by the county tag agent” in the second sentence, and added the last sentence.

### JUDICIAL DECISIONS

**Sentence not unconstitutional.** — Defendant’s sentence of 12 months confinement to be served on probation following 60 days of confinement, \$1,500 in fines, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving with-

out insurance, and failing to register a vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. *Smith v. State*, 311 Ga. App. 184, 715 S.E.2d 434 (2011).

### 40-2-23. County tax collectors and tax commissioners designated tag agents.

(a) The tax collectors of the various counties of this state and the tax commissioners of those counties in which the duties of the tax collector are performed by a tax commissioner shall be designated as tag agents of the commissioner for the purpose of accepting applications for the registration of vehicles. The commissioner is authorized to promulgate rules and regulations for the purpose of delegating to such tag agents the custodial responsibility for properly receiving, processing, issuing, and storing motor vehicle titles or registrations, or both.

(b) The duties and responsibilities of agents of the commissioner designated under this Code section shall be a part of the official duties and responsibilities of the county tax collectors and tax commissioners. (Ga. L. 1955, p. 659, § 1; Ga. L. 1957, p. 197, § 1; Ga. L. 1965, p. 5, § 1; Ga. L. 1966, p. 508, § 1; Code 1981, § 40-2-22; Code 1981, § 40-2-23, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1815, § 1; Ga. L. 1997, p. 739, § 1; Ga. L. 2000, p. 951, § 3-3; Ga. L. 2012, p. 257, § 1-1/HB 386.)

**The 2012 amendment**, effective March 1, 2013, deleted former subsection (b), which read: “The state revenue commissioner is authorized to further designate each such tag agent as a sales tax agent for the purpose of collecting sales and use tax with respect to the casual sale or casual use of a motor vehicle. For purposes of this Code section, ‘casual sale’

or ‘casual use’ means the sale of a motor vehicle by a person who is not regularly or systematically engaged in making retail sales of motor vehicles and the first use, consumption, distribution, or storage for use or consumption of such motor vehicle purchased through a casual sale. As personal compensation for services rendered to the Department of Revenue with re-

spect to the collection of such sales and use tax, each such designated tag agent shall be authorized to retain from such collection a fee of \$200.00 per month. In any month in which an insufficient amount of such tax is collected to pay such fee, the amount of any such unpaid fee may be deferred until such month as sufficient collections are made. Such compen-

sation shall be in addition to any other compensation to which such tax collector or tax commissioner is entitled.”; and redesignated former subsection (c) as present subsection (b).

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

#### 40-2-28. Proof of ownership.

### JUDICIAL DECISIONS

**Innocent purchaser for value.** — In a prosecution for felony theft by taking of a van, the trial court was entitled to conclude that the victim was an innocent purchaser for value, believing the seller to be the owner, the defendant’s claim to the

contrary notwithstanding; moreover, pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish this fact. *Coursey v. State*, 281 Ga. App. 494, 636 S.E.2d 669 (2006).

#### 40-2-29. Registration and license plate requirement; license fee to accompany application; temporary operating permit; penalties.

(a) Except as otherwise provided in this chapter, any person purchasing or acquiring a vehicle shall register and obtain, or transfer, a license plate to operate such vehicle from the county tag agent in their county of residence no later than seven business days after the date of purchase or acquisition of the vehicle by presenting to the county tag agent the following:

(1) A motor vehicle certificate of title as provided in Chapter 3 of this title;

(2) Satisfactory proof of owner’s insurance coverage as provided for in subsection (d) of Code Section 40-2-26;

(3) If applicable, satisfactory proof of compliance with the Article 2 of Chapter 9 of Title 12, the “Georgia Motor Vehicle Emission Inspection and Maintenance Act”; and

(4) Satisfactory proof that all fees, permits, and taxes have been paid.

(b) An application for registration shall be accompanied by check; cash; certified or cashier’s check; bank, postal, or express money order; or other similar bankable paper for the amount of the license plate or temporary permit fee or any taxes required by law.

(c) A person unable to fully comply with the requirements of subsection (a) of this Code section shall register such vehicle and receive a



temporary operating permit that will be valid until the end of the initial registration period as provided for in paragraph (.1) of subsection (a) of Code Section 40-2-21.

(d) A conviction for displaying a license plate or temporary license plate not provided for in this chapter shall be punished as a misdemeanor. (Ga. L. 1925, p. 315, § 1; Ga. L. 1927, p. 226, § 6; Ga. L. 1931, p. 7, § 84; Code 1933, §§ 68-208, 68-212; Ga. L. 1960, p. 943, § 1; Code 1981, § 40-2-27; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 537, § 2; Code 1981, § 40-2-29, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 143, § 4/HB 1005; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “provided for in paragraph (.1)” for “provided for in paragraph (1)” near the end of subsection (c).

**40-2-31. Five-year and annual license plates; design; costs of manufacture and delivery retained from registration fees; revalidation and county decals; “In God We Trust” decals.**

(a) If the applicant meets the requirements set forth in this chapter, the commissioner shall issue to the applicant a license plate bearing a distinctive number.

(b) Such license plates shall be at least six inches wide and not less than 12 inches in length, except motorcycle license plates which shall be at least four inches wide and not less than seven inches in length, and shall show in boldface characters the month and year of expiration, the serial number, and either the full name or the abbreviation of the name of the state, shall designate the county from which the license plate was issued unless specifically stated otherwise in this chapter, and shall show such other distinctive markings as in the judgment of the commissioner may be deemed advisable, so as to indicate the class of weight of the vehicle for which the license plate was issued; and any license plate for a low-speed vehicle shall designate the vehicle as such. Such plates may also bear such figures, characters, letters, or combinations thereof as in the judgment of the commissioner will to the best advantage advertise, popularize, and otherwise promote Georgia as the “Peach State.” The license plate shall be of such strength and quality that the plate shall provide a minimum service period of at least five years. The commissioner shall adopt rules and regulations, pursuant to the provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” for the design and issuance of new license plates and to implement the other provisions of this Code section.

(b.1) Notwithstanding the provisions of Code Sections 40-2-131 and 48-2-17, the commissioner shall retain the costs of manufacturing and

delivery of license plates, revalidation decals, and county name decals from the registration fee as set forth in Code Section 40-2-151.

(c) The face of the license plate to be displayed shall be treated completely with a retroreflective material which will increase the nighttime visibility and legibility of the plate. The department shall prepare the specifications which such retroreflective material shall meet.

(d) In those years in which a new license plate is not issued, a revalidation decal with a distinctive serial number shall be issued and affixed in the space provided on the license plate issued to the applicant which shall indicate the year and month through which the registration of the vehicle shall be valid; provided, however, that if the commissioner determines that it is necessary, two revalidation decals shall be issued for each license plate to reflect the required information. When an applicant is issued a revalidation decal and such applicant registered the vehicle in another county the previous year, the applicant shall also be issued a new county decal which shall be properly affixed to the license plate and shall replace the other county decal.

(e) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the name of the agent's county. Such a decal shall be issued with each metal license plate and shall be affixed in the space provided on the license plate without obscuring any number or other information required to be present on the plate. A tag agent shall offer, upon such issuance of a new permanent license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust."

(f) A county tag agent shall issue a county name decal, upon request, for the agent's county only if:

(1) The applicant is a resident of or a business located in the county named on the decal;

(2) The applicant is registering a new vehicle in such county, is renewing a current vehicle registration, or is transferring registration of a vehicle to the county named on the decal; and

(3) The application for registration of the vehicle is being made in the county named on the decal.

(g) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the nation's motto, "In God We Trust." A tag agent shall offer, upon such issuance of a new permanent license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust." Such a decal shall be issued, upon request and free of

charge, by a county tag agent with each new permanent license plate. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1943, p. 341, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1955, p. 659, § 7C; Ga. L. 1969, p. 266, §§ 2, 3; Ga. L. 1979, p. 615, § 1; Ga. L. 1981, p. 714, §§ 1, 2; Code 1981, § 40-2-29; Ga. L. 1982, p. 1584, §§ 2A, 5A; Ga. L. 1986, p. 1333, § 1; Ga. L. 1987, p. 949, § 2; Ga. L. 1988, p. 380, § 3; Code 1981, § 40-2-31, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 4; Ga. L. 1996, p. 1118, § 4; Ga. L. 1997, p. 419, § 6; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 512, § 6; Ga. L. 2006, p. 434, § 1/HB 363; Ga. L. 2010, p. 9, § 1-67/HB 1055; Ga. L. 2012, p. 1070, § 2/SB 293.)

**The 2012 amendment**, effective July 1, 2012, added the last sentence of subsection (e); inserted “, upon request,” in the introductory language of subsection (f); and added subsection (g). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date.”

#### 40-2-38.1. Transporter license plate.

(a) A person engaged in the business of the limited operation of a motor vehicle or trailer for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the delivery of new or used motor vehicles, trucks, trailers, or buses between manufacturers, distributors, dealers, sellers, or purchasers;

(2) To move a mobile office, a mobile classroom, a mobile or manufactured home, or a house trailer;

(3) To drive a motor vehicle or pull a trailer that is part of the inventory of a dealer to and from a motor vehicle or trailer trade show or exhibition or to, during, and from a parade in which the motor vehicle or trailer is used; or

(4) To drive special mobile equipment in any of the following circumstances:

(A) From the manufacturer of the equipment to a facility of a dealer; or

(B) From one facility of a dealer to another facility of a dealer.

(b) This Code section shall not be construed to require a motor vehicle or trailer dealer to obtain transporter plates in order to transport vehicles for sale or lease.

(c) A person may obtain a transporter plate by filing an application with the Department of Revenue and paying the required fee. The fee



for an initial transporter plate shall be \$62.00 and the fee for all additional plates shall be \$12.00. An application for a transporter plate must be on a form provided by the department and must contain the information required by the department. The department is authorized to promulgate regulations consistent with this Code section.

(d) Transporter plates issued under this Code section shall be distinguishable from dealer, wholesaler, manufacturer, or distributor plates, as provided for in Code Section 40-2-38.

(e) During the year for which it is issued, a person may transfer a transporter plate from one vehicle to another so long as the vehicle is driven or pulled only for a purpose authorized by subsection (a) of this Code section. In order to obtain a transporter plate, an applicant must demonstrate to the department compliance with all applicable federal and state laws.

(f) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that an applicant has unlawfully used such license plates for purposes other than those expressly permitted by this Code section.

(g) If a license plate issued pursuant to this Code section is lost or stolen, the dealer, manufacturer, distributor, or other party to whom the license plate was issued must immediately report the lost or stolen plate to local law enforcement agencies. If a replacement license plate is sought, the dealer, manufacturer, distributor, or other party to whom the license plate was issued shall file a notarized affidavit with the department requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the license plate has been lost or stolen and that the loss has been reported to a local law enforcement agency.

(h) This Code section shall not in any way apply to farm tractors.

(i)(1) The expiration of a license plate issued pursuant to this Code section shall be the last day of the registration period as provided in division (a)(1)(A)(ii) of Code Section 40-2-21, except that for the purposes of this subsection, the registration period shall be determined by the first letter of the legal name of the business listed on the application for registration or renewal of registration. An application for renewal of registration shall not be submitted earlier than 90 days prior to the last day of the registration period. A penalty of 25 percent of the total registration fees due shall be assessed any person registering pursuant to this Code section who, prior to the expiration of such person's registration period, fails to apply for renewal or if having applied fails to pay the required fees.

(2) A transition period shall commence on October 1, 2007, and conclude on December 31, 2007, for all existing registrations and any

new registration applications presented prior to January 1, 2008. On or after January 1, 2008, new applications for registration shall be submitted and remain valid until the expiration of such registration as specified in paragraph (1) of this subsection.

(j) The commissioner shall adopt rules and regulations for the implementation of this Code section. (Code 1981, § 40-2-38.1, enacted by Ga. L. 2006, p. 465, § 2/HB 1052; Ga. L. 2007, p. 652, § 5/HB 518; Ga. L. 2012, p. 155, § 1/HB 732.)

**The 2012 amendment**, effective July 1, 2012, inserted “or trailer” throughout subsection (a) and once in subsection (b); inserted “trailers,” in paragraph (a)(1); inserted “or pull a trailer” in paragraph (a)(3); and inserted “or pulled” in the first sentence of subsection (e).

#### 40-2-41. Display of license plates.

### JUDICIAL DECISIONS

**Cited** in *Hernandez-Lopez v. State*, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

## ARTICLE 3

### PRESTIGE LICENSE PLATES AND SPECIAL PLATES FOR CERTAIN PERSONS AND VEHICLES

#### 40-2-60.1. **Standardized administrative process for special license plates; legislative findings; rules and regulations; definitions; utilization of funds; designs; fees; application for special license plates; continued issuance of plates; transfer of plates.**

(a) The General Assembly finds that in recent years numerous laws were enacted providing for the issuance of special license plates for certain persons and vehicles. The General Assembly finds that there exists a need for a standardized administrative process to provide for the authorization of issuance of such special license plates and that the public interest will be best served by such a standardized administrative process. While recognizing that the legislature may not abridge or delegate its powers, the General Assembly declares that it is in the public interest of this state for future proposals for special license plates to be governed by the administrative process established by this Code section rather than by the legislative process.

(b)(1) The General Assembly determines that the issuance of special license plates to support an agency, fund, or program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue

Code and the dedication of a portion of the funds raised from the issuance of these special license plates is in the best interests of the people of this state and is authorized by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) The commissioner is authorized to adopt rules and regulations for the issuance of special license plates for groups of individuals and vehicles. All special license plates issued pursuant to this paragraph shall not be subject to the provisions of subsection (e) of this Code section.

(c) As used in this Code section, the term:

(1) "Manufacturing fee" means a \$25.00 fee paid at the time an application is submitted or upon the issuance of a special license plate.

(2) "Registration fee" means the fees as set forth in Code Section 40-2-151.

(3) "Special license plate" means a license plate that is authorized under this Code section that commemorates an event or supports an agency, fund, or program beneficial to the people of this state or is specifically authorized by the General Assembly for certain persons or vehicles.

(4) "Special license plate fee" means a \$35.00 fee paid at the time a special license plate is issued.

(5) "Special license plate renewal fee" means a \$35.00 fee paid at the time a special license plate is renewed and a revalidation decal is issued.

(c.1) Any special license plate issued under the provisions of this Code section shall be subject to the manufacturing fee, special license plate fee, and special license plate renewal fee provided for in this Code section.

(d) The agency, fund, or nonprofit corporation sponsoring a special license plate, in cooperation with the commissioner, shall design a special distinctive license plate appropriate to promote the program benefited by the issuance of the special license plate. Special license plates for groups of individuals and vehicles shall be readily recognizable by the insertion of an appropriate logo or graphic identifying the special nature of the license plate. All special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. Spaces for county name labels or other authorized labels,



including the “In God We Trust” label, are required for all special license plates unless expressly eliminated under this chapter.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the issuance of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds will be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) Notwithstanding the other provisions of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The department shall not utilize any graphic that is copyrighted unless a sponsoring organization has secured for the state the authority to utilize the copyrighted design at no cost to the state and the sponsoring organization has agreed to hold the state harmless against any related claim of copyright violation or infringement. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(g) Any Georgia resident who is the owner of a motor vehicle, except a commercial vehicle as defined in 49 C.F.R. Section 390.5, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and payment of the appropriate fees as set forth in this Code section in addition to the required motor vehicle registration fee, shall be able to apply for a special license plate as provided in this Code section.

(h) Any party requesting a special license plate not previously authorized by this chapter shall make application with the department.

The application shall include a design of the proposed license plate and a bond of \$50,000.00 to serve as surety for moneys collected from applicants by the sponsor. The commissioner shall review and approve or disapprove all applications within 30 days of receipt by the department. Upon approval of the design by the commissioner, the special license plate authorized pursuant to this subsection shall not be issued except upon the receipt by the department of at least 1,000 prepaid applications together with the manufacturing fees within two years after the date of approval by the commissioner. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees held by the department and the sponsor shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(i) Upon the receipt of 1,000 applications together with manufacturing fees, the commissioner shall provide a letter of certification to the sponsor verifying that the sponsor has satisfied the requirements of the provisions of this Code section. Upon receipt of the letter of certification, the sponsor, if necessary, shall seek enactment of the appropriate legislation required to authorize manufacture of the special license plate.

(j) The department shall not be required to continue to manufacture a special license plate or accept renewals and applications if the number of active registrations falls below 500 registrations at any time during a calendar year. A current registrant may continue to renew such special license plate during his or her annual registration period. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the number of active registrations for the special license plate falls below 500 at any time during a calendar year, the sponsoring agency, fund, or nonprofit corporation shall be required to obtain 1,000 applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(k) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(l) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(m) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section. The rules and regulations to be promulgated by the commissioner may provide for exceptions whereby a special license

plate will not be issued if the issuance of the plate would adversely affect public safety. (Code 1981, § 40-2-60.1, enacted by Ga. L. 1997, p. 1559, § 2; Ga. L. 1998, p. 1179, § 12B; Ga. L. 2000, p. 951, § 3-10; Ga. L. 2002, p. 1215, § 3; Ga. L. 2005, p. 1159, § 1/SB 168; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2007, p. 180, § 1/HB 457; Ga. L. 2010, p. 9, § 1-70/HB 1055; Ga. L. 2012, p. 1070, § 3/SB 293; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2012 amendment**, effective July 1, 2012, in subsection (d), in the first sentence, substituted “benefitted” for “benefited”, and substituted the present last sentence for the former last sentence, which read: “Spaces for county name labels are required for license plates authorized under this Code section unless expressly eliminated by the request of the agency, fund, or nonprofit corporation sponsoring a special license plate at the time the license plate is designed”. See editor’s note for applicability.

**The 2013 amendment**, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the first sentence of subsection (d).

**Editor’s notes.** — Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date.”

## **40-2-62. Special license plates for members of General Assembly.**

The commissioner shall mail special and distinctive license plates printed for members of the General Assembly and former members of the General Assembly who are hereby deemed to have emeritus status after having served in the General Assembly eight or more years to the local tag agent in the counties wherein such members or former members reside on or before the owner’s registration period each year. Such special and distinctive license plates shall be issued only upon applications made to the local tag agent and payment of a \$25.00 manufacturing fee. License plates may be issued by the local tag agent upon a proper application and in accordance with the terms of this chapter. License plates issued pursuant to this Code section need not contain a place for the county name decal, and no county name decal need be affixed to a license plate issued pursuant to this Code section. Special and distinctive license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of \$35.00 which shall be collected by the county tag agent at the time for collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The special license plates issued pursuant to this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80. (Ga. L. 1968, p. 1216, § 1; Code 1981, § 40-2-61; Ga. L. 1986, p. 1333, § 3; Code 1981, § 40-2-62, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4.1; Ga. L.



1995, p. 809, § 7; Ga. L. 1997, p. 419, § 15; Ga. L. 2010, p. 9, § 1-72/HB 1055; Ga. L. 2013, p. 265, § 1/SB 121.)

**The 2013 amendment**, effective July 1, 2013, in the first sentence, inserted “and former members of the General Assembly who are hereby deemed to have emeritus status after having served in the General Assembly eight or more years” in the middle and inserted “or former members” near the end. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 265, § 4/SB 121, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall only apply to members of the General Assembly who have eight or more years of service as of December 31, 2013.

#### **40-2-70. Special license plates for disabled veterans not qualifying under Code Section 40-2-69.**

(a) Any citizen and resident of the State of Georgia who has been discharged from the armed forces under conditions other than dishonorable or who is currently serving in the armed forces, who is disabled to any degree specified and enumerated in Code Section 40-2-69, and who is the owner of a private passenger motor vehicle, but who cannot qualify under Code Section 40-2-69, shall be entitled to a special and distinctive automobile license plate. Such license plate shall be transferred to another vehicle acquired by such veteran or jointly by such veteran and his or her spouse as provided in Code Section 40-2-80. Such veteran shall be entitled to such plate regardless of whether he or she is suffering from a service connected or nonservice connected disability.

(b) Such veteran must apply for such license plate and, upon compliance with the state motor vehicle laws for licensing of motor vehicles and without payment of the regular license fee for plates as prescribed under Article 7 of this chapter, such veteran shall be issued similar license plates as prescribed in Code Section 40-2-71 for private passenger cars. There shall be no charge for the additional plate issued such veteran under this Code section. There shall be no charge for revalidation decals for such plates.

(c) If a veteran has not been certified as disabled by the United States Department of Veterans Affairs, such veteran may submit to the Department of Veterans Service such veteran’s discharge papers and a certified statement from a physician, licensed under Chapter 34 of Title 43, certifying that in the opinion of such physician such veteran is disabled to a degree enumerated in Code Section 40-2-69. If the certificate from the physician indicates the qualifying disabilities which meet the standards of the United States Department of Veterans Affairs, the commissioner of veterans service shall submit a letter to the state revenue commissioner indicating that the veteran meets the requirements of this Code section and qualifies for a special license plate as provided in this Code section. (Ga. L. 1967, p. 539, § 1; Code

1981, § 40-2-69; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-70, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 467, § 1; Ga. L. 1996, p. 1118, § 10; Ga. L. 1997, p. 419, § 20; Ga. L. 1998, p. 1179, § 15; Ga. L. 2000, p. 951, § 3-11; Ga. L. 2002, p. 1074, § 6; Ga. L. 2005, p. 334, § 14-5/HB 501; Ga. L. 2012, p. 155, § 2/HB 732.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provisions of this Code section as subsections (a) through (c); inserted “or who is currently serving in the armed forces” in the

first sentence of subsection (a); and, in subsection (b), inserted “without” in the first sentence, and added the third sentence.

#### **40-2-71. Design of disabled veteran plates; restrictions on issuance and transfer.**

(a) The commissioner is directed to furnish the license plates provided for in Code Sections 40-2-69 and 40-2-70. Such plates shall be printed in three colors: red, white, and blue. The commissioner is authorized and directed to design the license plate. Each plate shall contain, in bold characters, the name of the state, or abbreviation thereof, the year, the serial number, either the words “Disabled Veteran” or “Disabled Vet,” and an image of the International Symbol of Access which is at least one inch in height and is white on a blue background.

(b) Such license plates so issued shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) No disabled veteran shall be entitled to own or operate more than one vehicle with the free license plates provided by Code Sections 40-2-69, 40-2-70, and this Code section. (Ga. L. 1956, p. 336, §§ 2, 3, 5; Ga. L. 1957, p. 69, § 2; Ga. L. 1959, p. 349, § 2; Code 1981, § 40-2-70; Ga. L. 1990, p. 1476, § 1; Code 1981, § 40-2-71, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1118, § 11; Ga. L. 1997, p. 419, § 21; Ga. L. 1998, p. 1179, § 16; Ga. L. 2012, p. 155, § 3/HB 732.)

**The 2012 amendment**, effective July 1, 2012, substituted “number, either the words ‘Disabled Veteran’ or ‘Disabled Vet,’ and an image of the International Symbol of Access which is at least one inch in

height and is white on a blue background” for “number, and either the words ‘Disabled Veteran’ or ‘Disabled Vet’” in the last sentence of subsection (a).

#### **40-2-74. Special license plates for persons with disabilities.**

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

**40-2-74.1. Special decal for persons with disabilities.**

(a) The department shall issue parking permits for persons with disabilities and may delegate to county tag agents the responsibility for issuance of such permits to residents of the county served by the tag agent. The department shall receive applications for and issue parking permits by mail to persons with disabilities upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a disabled person, the specific disability that limits or impairs the person's ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. Permits shall be in such form as the department prescribes but shall be of sufficient size and sufficiently distinctively marked to be easily visible when placed on or affixed to the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle. Permits shall be made of a substrate as determined by the commissioner and shall be of sufficient quality to ensure that the coloring of the permit and the ink used thereon will resist fading for a period of at least four years. Permits shall be issued to individuals, and the name of the individual and an identification number shall appear on the permit. The individual to whom a permit is issued may use the permit for any vehicle he or she is operating or in which he or she is a passenger. Permits shall also be issued to institutions when the primary purpose of a vehicle operated by the institution is to transport individuals with disabilities. The name of the institution, the license number of the particular vehicle, and an identification number shall appear on the permit. The institution shall use such permit only for a vehicle which is operated by the institution and which is used primarily to transport individuals with disabilities.

(b) The department shall issue a temporary permit to any temporarily disabled person upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a temporarily disabled person, the specific disability that limits or impairs the person's ability to walk, that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221, and a date until which such person is likely to remain disabled. The temporary permit shall show prominently on its face an expiration date the same as the date specified by such doctor for the likely termination of the disability, which date shall not be more than 180 days after the date the permit is issued. The expiration date shall be printed with permanent ink and in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.



(c) The department shall issue a permanent permit to any permanently disabled person upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a permanently disabled person. The affidavit shall further state the specific disability that limits or impairs the person's ability to walk or that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. The department shall also issue a permanent permit to an institution which operates vehicles used primarily for the transportation of individuals with disabilities upon presentation of a certification from the institution regarding use of its vehicles. The institution shall receive permits only for the number of vehicles so used and shall affix the permits to the driver's side of the dashboards of such vehicles. The permanent permit shall be predominantly blue in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be machine printed, not handwritten, in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.

(d) Any individual to whom a specially designated disabled veteran's license plate has been issued pursuant to Code Sections 40-2-69 through 40-2-72 and any individual to whom a specially designated disabled person's license plate has been issued pursuant to Code Section 40-2-74 shall be authorized to park the passenger motor vehicle on which the specially designated license plate is attached in a parking place for persons with disabilities without the necessity of obtaining a parking permit for persons with disabilities pursuant to this Code section.

(e) The department shall issue a special permanent permit to any person who:

(1) Because of a physical disability drives a motor vehicle which has been equipped with hand controls for the operation of the vehicle's brakes and accelerator; or

(2) Is physically disabled due to the loss of, or loss of use of, both upper extremities.

This special permanent permit shall be gold in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be printed in a size of print that is legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror. Such a special permit shall be used in the same manner as, and shall be subject to the provisions of this Code section relating to, other permanent parking permits for persons with disabilities and shall also be used as provided

in Code Section 10-1-164.1. In addition to any other required printing, the following shall be printed upon this special gold permit:

“Code Section 10-1-164.1 of the Official Code of Georgia Annotated requires that any owner or operator of a gasoline station that sells full-service gasoline at one price and self-service at a lower price shall provide the service of dispensing gasoline at the self-service price for the holder of this special permit when such holder requests such service and is the operator of the vehicle and is not accompanied by another person 16 years of age or older who is not mobility impaired or blind.”

(f) The department and county tag agents shall not charge or collect any fee for issuing parking permits for persons with disabilities under this Code section.

(g) Any special disabled person decal issued under the former provisions of this Code section shall be valid until its expiration date but shall not be reissued.

(h) For purposes of this Code section, an active duty military physician shall be entitled to submit an affidavit in support of the application of active duty or retired military personnel for parking permits for persons with disabilities whether or not such physician is licensed to practice in Georgia. Such affidavit shall state that the applicant is in active military service and is stationed in Georgia pursuant to military orders or is retired from the military and is a resident of Georgia and that such person is a disabled person, the specific disability that limits or impairs the person's ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. (Code 1981, § 40-2-74.1, enacted by Ga. L. 2005, p. 1159, § 4/SB 168; Ga. L. 2006, p. 659, § 1/HB 1217; Ga. L. 2008, p. 147, § 1/HB 961; Ga. L. 2008, p. 369, § 1/SB 369; Ga. L. 2012, p. 804, § 3/HB 985.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), substituted “a substrate as determined by the commissioner” for “plastic or heavyweight cardboard” in the fourth sentence, and deleted the former fifth sentence, which read: “The front and back surfaces of the permit shall be laminated to prevent alteration of the information printed underneath on

the permit.”; and, in subsection (b), deleted “shall vary in color from one period to the next renewal period and” following “The temporary permit” at the beginning of the second sentence, and substituted “printed with permanent ink and” for “machine printed, not handwritten,” in the third sentence.

#### **40-2-84. License plates for veterans awarded Purple Heart.**

(a)(1) Motor vehicle or motorcycle owners who are veterans of the armed forces of the United States who have been awarded the Purple Heart citation shall be eligible to receive a special and distinctive

vehicle license plate for a private passenger car, motorcycle, trailer, or truck used for personal transportation, provided that the requisite number of applications is received by the commissioner as provided in subsection (b) of this Code section. Such license plate shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2) For purposes of this Code section, the term “veteran” shall include a member of the armed forces or reserves who is still serving on active duty after being awarded the Purple Heart citation.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. Said applicant may apply for and be limited to not more than one free license plate at a time; provided, however, that upon payment of the regular license fee provided for in Code Section 40-2-151 and payment of the manufacturing fee provided for in this Code section, a veteran may obtain an additional such license plate. The commissioner shall retain all applications received for such special and distinctive license plate until a minimum of 250 applications have been received. After receipt of 250 applications for such distinctive license plate, the commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to present and future qualifying applicants. If the commissioner does not receive the required minimum 250 applications no later than July 31 of the year preceding the year of issuance of such plates, the commissioner shall not accept any applications for nor issue such distinctive license plates and all fees shall be refunded to applicants. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles, and trucks before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for each additional special and distinctive license plate shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (d) of this Code section, such plates shall be nontransferable.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, motorcycles, or trucks used for personal transportation. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a Purple Heart recipient. For any redesigned



plates issued on or after January 1, 2006, such inscription shall include the designation “Combat Wounded.”

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the armed forces of the United States who was awarded the Purple Heart citation shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran’s death or acquired thereafter, so long as such person does not remarry.

(e) For each additional special license plate issued under this Code section there shall be an additional \$25.00 annual registration fee which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. (Code 1981, § 40-2-84, enacted by Ga. L. 1990, p. 1316, § 1; Ga. L. 1991, p. 1145, § 2; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 13; Ga. L. 1993, p. 1793, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 564, § 1; Ga. L. 1997, p. 419, § 29; Ga. L. 1998, p. 1179, § 25; Ga. L. 2000, p. 830, § 3; Ga. L. 2002, p. 1074, § 5; Ga. L. 2005, p. 1159, § 5/SB 168; Ga. L. 2012, p. 110, § 1/SB 473; Ga. L. 2012, p. 155, § 4/HB 732.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (a) as paragraph (a)(1); in the first sentence of paragraph (a)(1), inserted “trailer,” and substituted “is received” for “are received”; and added paragraph

(a)(2). The second 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (a) as paragraph (a)(1); substituted “is” for “are” in paragraph (a)(1); and added and identical paragraph (a)(2).

### 40-2-85.1. Special and distinctive license plates for veterans.

(a) For purposes of this Code section, the term:

(1) “Military medal award” means the following medals, decorations, or other recognition of honor for military service awarded by a branch of the United States military:

- (A) Medal of Honor;
- (B) Bronze Star Medal;
- (C) Silver Star Medal;
- (D) Distinguished Service Cross;
- (E) Navy Cross;
- (F) Air Force Cross;

- (G) Defense Distinguished Service Medal;
- (H) Homeland Security Distinguished Service Medal;
- (I) Distinguished Service Medal;
- (J) Navy Distinguished Service Medal;
- (K) Air Force Distinguished Service Medal;
- (L) Coast Guard Distinguished Service Medal;
- (M) Defense Superior Service Medal;
- (N) Legion of Merit;
- (O) Distinguished Flying Cross;
- (P) Purple Heart; and
- (Q) Air Medal.

(2) “Served during active military combat” means active duty service in World War I, World War II, the Korean War, the Vietnam War, Operation Desert Storm, the Global War on Terrorism as defined by Presidential Executive Order 13289, Section 2, the war in Afghanistan, or the war in Iraq, which includes either Operation Iraqi Freedom or Operation Enduring Freedom.

(3) “Veteran” means a former member of the armed forces of the United States who is discharged from the armed forces under conditions other than dishonorable.

(b)(1) Motor vehicle and trailer owners who are veterans of the armed forces of the United States, or who have received a military medal award, or persons who served during active military combat shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2)(A) Motor vehicle and trailer owners who are veterans or have received a military medal award or served during active military combat shall be issued upon application for and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles a veteran’s license plate, military medal award recipient license plate, or commemorative service license plate for service during active military combat. One such license plate shall be issued without the requisite registration fee, manufacturing fee, or annual registration fee.

(B) Each member or former member of the armed forces listed in this subsection shall be entitled to no more than one such free license plate at a time; provided, however, that upon payment of a manufacturing fee of \$25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which a \$25.00 manufacturing fee is required, there shall be an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(c) The commissioner shall design a veteran's license plate, a military medal award recipient license plate, and a license plate to commemorate service with the United States armed forces during active military combat. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, trucks, and trailers before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (e) of this Code section, such plates shall be nontransferable.

(d) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, trucks, and trailers used for personal transportation. Such plates shall contain such words or symbols, in addition to the numbers and letters prescribed by law, so as to identify distinctively the owners as veterans of the armed forces of the United States, recipients of a military medal award, or persons who served during active military combat and shall additionally identify distinctly the owner as a veteran of one of the following branches of the armed forces: Army, Navy, Marines, Air Force, or Coast Guard.

(e) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the armed forces of the United States or of a deceased person who received a military medal award or who served during active military combat shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(f) Special license plates issued under this Code section, except as provided in subparagraph (b)(2)(A) of this Code section, shall be



renewed annually with a revalidation decal as provided in Code Section 40-2-31 without payment of an additional \$25.00 annual registration fee. (Code 1981, § 40-2-85.1, enacted by Ga. L. 1991, p. 1036, § 1; Ga. L. 1992, p. 779, § 15; Ga. L. 1992, p. 2785, § 1.1; Ga. L. 1994, p. 413, § 4; Ga. L. 1994, p. 564, § 3; Ga. L. 1997, p. 419, § 31; Ga. L. 1998, p. 1179, § 27; Ga. L. 2001, p. 479, § 1; Ga. L. 2007, p. 668, § 2/SB 81; Ga. L. 2012, p. 155, § 5/HB 732; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 265, § 2/SB 121.)

**The 2012 amendment**, effective July 1, 2012, added subsection (a); redesignated former subsection (a) as present paragraph (b)(1); in paragraph (b)(1) and in subparagraph (b)(2)(A), inserted “and trailer” in the first sentence; in paragraph (b)(1), substituted “, or who have received a military medal award, or persons who served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm” near the middle of the first sentence and added the second sentence; in subparagraph (b)(2)(A), in the first sentence, inserted “or have received a military medal award or served during active military combat” near the middle, and added “, military medal award recipient license plate, or commemorative service license plate for service during active military combat” at the end, in the second sentence, deleted “retired veterans” following “One such”; in subparagraph (b)(2)(B), in the first sentence, substituted “Each member or former member” for “Each retired member” and inserted “listed in subsection (b) of this Code section”; redesignated former subsection (b) as present subsection (c), and, in subsection (c), substituted the present provisions of the first sentence for the former provisions, which read: “The commissioner shall design a retired veteran’s license plate or a distinctive license plate to commemorate service by the United States armed forces in wars listed in subsection (a) of this Code section.”; substituted “cars, trucks, and trailers” for “cars and trucks” in the second sentence of subsection (c) and in the first sentence of present subsection (d); redesignated former subsection (c) as present subsection (d); in subsection (d), substituted “, or recipients of a military medal award, or persons who

served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm”; redesignated former subsection (d) as present subsection (e); in subsection (e), in the second sentence, deleted “retired” following “deceased” near the beginning, and substituted “received a military medal award or who served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm” near the middle; and redesignated former subsection (e) as present subsection (f).

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this subsection” for “subsection (b) of this Code section” in the first sentence of subparagraph (b)(2)(B) and substituted “United States, recipients” for “United States, or recipients” near the middle of the second sentence in subsection (d). The second 2013 amendment, effective July 1, 2013, added paragraph (a)(3); in the first sentence of paragraph (b)(1) and in the second sentence of subsection (d), deleted “retired” preceding “veterans”; in paragraph (b)(1), deleted the former second sentence, which read: “Eligibility to receive a special and distinctive vehicle license plate for persons who are no longer serving in the United States military shall be conditioned on such person having been discharged from military service under honorable conditions.”; in subparagraph (b)(2)(A), in the first sentence, substituted “owners who are veterans” for “owners who retired from active duty with the armed forces of the United States” near the beginning; deleted “retired” preceding “veteran’s” near the middle of subparagraph (b)(2)(A) and in the first sentence of

subsection (c); deleted “, for such plates manufactured after July 1, 2001,” following “additionally” near the end of subsection (d); and deleted the former last sentence in subsection (f), which read: “It shall be a requirement that a county name decal shall be affixed and displayed on license plates issued under this Code section.”

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “subsection (e)” was substituted for “subsection (d)” in the last sentence of subsection (c) and “subparagraph (b)(2)(A)” was substituted for “subparagraph (a)(2)(A)” in the first sentence of subsection (f).

**40-2-86. Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations.**

(a)(1) As used in this Code section, the term:

(A) “Manufacturing fee” means a \$25.00 fee paid at the time a special license plate is issued.

(B) “Special license plate fee” means a \$35.00 fee paid at the time a special license plate is issued.

(C) “Special license plate renewal fee” means a \$35.00 fee paid at the time a revalidation decal is issued for a special license plate.

(2) In accordance with Article III, Section IX, Paragraph VI(n) of the Constitution, the General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and dedicating a portion of the funds raised from the sale of these special license plates is in the best interests of the people of this state.

(b) The agency, fund, or nonprofit corporation sponsoring the special license plate, in cooperation with the commissioner, shall design special distinctive license plates appropriate to promote the program benefited by the sale of the special license plate. The special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of \$25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise,

received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of the appropriate fees in addition to the regular motor vehicle registration fee shall be able to apply for a special license plate listed in this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized must be the same as those specified in this Code section authorizing the dedication to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached upon payment of the manufacturing fee and the special license plate renewal fee.

(g) On or after July 1, 2010, no special license plate authorized pursuant to subsection (l) of this Code section shall be issued except



upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fees. The special license plate shall have an application period of two years after the date on which the application period becomes effective for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(h) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to renew such special license plate during his or her annual registration period upon payment of the special license plate renewal fee which shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fees to continue to manufacture the special license plate.

(i) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(j) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(k) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section.

(l)(1) The General Assembly has determined that special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — \$25.00 of which \$24.00 is to be deposited into the general fund and \$1.00 to be paid to the local county tag agent;

(B) Special license plate fee — \$35.00 of which \$25.00 is to be deposited into the general fund and \$10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution; and

(C) Special license plate renewal fee — \$35.00 of which \$25.00 is to be deposited into the general fund and \$10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) Special license plates promoting the Nongame-Endangered Wildlife Program of the Georgia Department of Natural Resources. The funds raised by the sale of these special license plates shall be disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund of the Georgia Department of Natural Resources for the purposes enumerated in subsection (b) of Code Section 12-3-602. Such license plates shall not include a space for a county name decal but shall instead bear the legend “Give Wildlife a Chance” in lieu of the name of the county of issuance.

(3) A special license plate promoting conservation and enhancement of trout populations. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to supplement trout restoration and management programs.

(4) A special license plate supporting the Bobwhite Quail Restoration Initiative. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to conduct programs designed to enhance the bobwhite quail population in this state. Such programs may include the creation of habitat demonstration areas on state managed wildlife lands, education programs, technical assistance to private landowners in the creation and maintenance of bobwhite quail habitats on their lands, and projects to encourage public support for the license plate and the activities it funds. The Department of Natural Resources may enter into such contractual agreements as may be appropriate to further the objectives of the Bobwhite Quail Restoration Initiative, including entering into contractual agreements whereby private landowners, public agencies, or corporate entities create, preserve, or enhance habitat for bobwhite quail in return for the payment of incentives. Such license plate shall not include a space for a county decal but shall instead bear the legend “Support Wildlife” in lieu of the name of the county of issuance.

(5) Special license plates promoting the conservation of wildflowers within this state. The funds raised by the sale of these special license plates shall be disbursed to the Department of Transportation

to be deposited in the Roadside Enhancement and Beautification Fund established by Code Section 32-6-75.2 and shall be expended only for the purposes enumerated in Code Section 32-6-75.2 and Article III, Section IX, Paragraph VI(l) of the Constitution of the State of Georgia.

(6) Special license plates promoting the dog and cat reproductive sterilization support program of the Georgia Department of Agriculture. The funds raised by the sale of these special license plates shall be disbursed to the Georgia Department of Agriculture and shall be deposited in the special fund for support of the dog and cat reproductive sterilization support program created by Code Section 4-15-1 and Article III, Section IX, Paragraph VI(m) of the Constitution of the State of Georgia.

(7) Special license plates to honor Georgia educators. The funds raised by the sale of these special license plates shall be disbursed to a charitable foundation designated by the State School Superintendent and used to fund educational programs, grants to teachers, and scholarships. The license plates shall display the phrase "Georgia Educators Make A Difference" and a ripe Red Delicious apple shall be depicted to the left of the identifying number of each plate.

(8)(A) The commissioner in cooperation with a college or university may design a special license plate to be issued commemorating that college or university, which license plate shall be similar in design to the license plate issued to all other residents of the state except that the logo or emblem of the college or university shall be placed on the license plate along with the letters and numbers on the license plate. The name of the college or university shall be imprinted on such special license plate in lieu of the county name decal.

(B) Any college or university that enters into an agreement with the commissioner pursuant to this paragraph shall waive any royalty fees to which it might otherwise be entitled for use of its seal, symbol, emblem, or logotype as provided in this paragraph.

(C) Each college or university located in Georgia that enters into an agreement with the commissioner pursuant to this paragraph shall designate a charitable foundation which shall annually receive an allocation from the special license plate and special license plate renewal fees collected as provided in paragraph (1) of this subsection. Special license plates issued under this paragraph shall be transferred between vehicles as provided in Code Section 40-2-42.

(D) The funds allocated for colleges and universities located in Georgia shall be delivered by the department to the charitable



foundation designated by the particular college or university to support needs based, academic, financial aid scholarships for eligible undergraduate students enrolled in the college or university. The funds otherwise allocated for colleges and universities located outside the State of Georgia shall be placed into the general fund.

(E) Each college or university shall review and approve plans for the implementation of these scholarship programs by the applicable charitable foundation. These plans shall include, but need not be limited to, criteria for the awarding of the scholarships and procedures for determining the recipients.

(9) A special license plate for the Georgia Center for the Book to support the purchase of books for public libraries in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Center for the Book.

(10) A special license plate for Children's Healthcare of Atlanta to support the work this pediatric hospital system does in the State of Georgia. The funds raised by the sale of this special license plate shall be disbursed to Children's Healthcare of Atlanta.

(11) A special license plate for the Georgia War Veterans Nursing Home to support the implementation and operation of the Georgia War Veterans Nursing Home. The funds raised by the sale of this special license plate shall be disbursed to the Department of Veterans Service for use in operating the Georgia War Veterans Nursing Home.

(12) A special license plate for the Georgia Automobile Racing Hall of Fame Association to promote the Georgia Automobile Racing Hall of Fame Association, which is devoted to preserving the history of automobile racing in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Automobile Racing Hall of Fame Association.

(13) A special license plate for the Alzheimer's Association, Georgia Chapter, to help eliminate Alzheimer's disease through the advancement of research and to enhance care and support for individuals, their families, and caregivers. The funds raised by the sale of this special license plate shall be disbursed to the Alzheimer's Association, Georgia Chapter.

(14) A special license plate for the school health and physical education program to help fund school health and physical education programs. The funds raised by the sale of this special license plate shall be disbursed to the Department of Education.

(15) A special license plate for stroke awareness, treatment, and prevention to support programs aiding stroke victims in Georgia.

Such license plate shall not include a space for a county name decal but shall instead bear the legend "Stroke Awareness" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Center for Telehealth of the Georgia Health Sciences University.

(16) A special license plate for Project Lifesaver promoting the establishment of a Project Lifesaver or similar type of program by local law enforcement agencies. Project Lifesaver's mission is to use state of the art technology in assisting those who care for victims of Alzheimer's disease and other related mental dysfunction disorders and victims who become lost. The funds raised by the sale of this special license plate shall be disbursed to the Department of Public Safety or a nonprofit corporation organized exclusively for the purpose of establishing a Project Lifesaver or similar type of program by local law enforcement agencies.

(17) A special license plate for pediatric cancer to raise funds to support the treatment of pediatric cancer. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Cure Kids' Cancer" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Department of Community Health to be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund pediatric cancer screening and treatment related programs for those children who are medically indigent and may have cancer.

(18) A special license plate for the child care industry to promote the child care industry by encouraging higher educational standards and providing for professional camaraderie for child care providers. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Support Improved Child Care" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Minority Alliance for Child Care Development Advocates, Inc., for the development of programs to help improve child care.

(19) A special license plate to display the motto, "In God We Trust." The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(20) A special license plate for child abuse prevention. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Prevent Child Abuse" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Foster Family Foundation of

Georgia for the development of programs to help victims of child abuse.

(21) A special license plate for the Thanks Mom and Dad Fund. The funds raised by the sale of this special license plate shall be disbursed to the Department of Human Services to address the key needs of the state's older population or a nonprofit corporation organized to serve the needs of the state's older population.

(22) A special license plate for pediatric cancer research. The funds raised by the sale of this special license plate shall be disbursed to the Joanna McAfee Childhood Cancer Foundation for support of pediatric cancer research. The design of the special license plate provided for in this paragraph shall include the words "Joanna McAfee Childhood Cancer Foundation" horizontally across the bottom of the plate in lieu of the county name.

(23) A special license plate for supporting beautification projects in Cobb County. The funds raised by the sale of this special license plate shall be disbursed to Keep Cobb Beautiful, Inc., for support of beautification projects in Cobb County.

(24) A special license plate for AID Atlanta. The funds raised by the sale of this special license plate shall be disbursed to AID Atlanta which is committed to providing people living with HIV the information and support they need to live healthy and productive lives.

(25) A special license endorsing "Support Our Troops." The funds raised by the sale of this special license plate shall be disbursed to the Georgia National Guard Family Support Foundation, Incorporated.

(26) A special license plate for the Sons of Confederate Veterans. The funds raised by the sale of this special license plate shall be disbursed to Georgia Sons of Confederate Veterans.

(27) A special license plate for amyotrophic lateral sclerosis (ALS), also known as "Lou Gehrig's disease," to support research and education on amyotrophic lateral sclerosis. The funds raised by the sale of this special license plate shall be disbursed to the ALS Association of Georgia.

(28) A special license plate for foster parents to support programs for foster parents in Georgia. The funds raised by the sale of this special license plate shall be disbursed to The Adoptive and Foster Parent Association of Georgia, Inc., for support of foster parents in Georgia.

(29) A special license plate for the Atlanta Braves Foundation to assist the charities supported by the foundation. The funds raised by the sale of this special license plate shall be disbursed to the



Department of Community Affairs or such other public agency or nonprofit corporation as may be designated.

(30) A special license plate for the Atlanta Falcons Youth Foundation to assist the charities supported by the foundation. The funds raised by the sale of this special license plate shall be disbursed to the Atlanta Falcons Youth Foundation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Atlanta Falcons" in lieu of the name of the county of issuance.

(31) A special license plate for supporting beautification projects in Georgia. The funds raised by the sale of this special license plate shall be disbursed to Keep Georgia Beautiful Foundation, Inc., for support of beautification projects in Georgia.

(32) A special license plate displaying the logo of Choose Life, Inc. The words "Choose Life" must appear at the bottom. The funds raised by the sale of this special license plate shall be disbursed to Choose Life of Georgia, Inc., to be distributed among nonprofit corporations in Georgia that counsel women to consider adoption.

(33) A special license plate supporting education on the maritime history of Georgia's coast. The funds raised by the sale of this special license plate shall be disbursed to The Georgia Maritime Foundation, Inc., for use in programs supporting education on the maritime history of Georgia.

(34) A special license plate supporting programs for persons with brain related disorders and disabilities. The funds raised by the sale of this special license plate shall be disbursed to Pilot International for support of programs for persons with brain related disorders in Georgia.

(35) A special license plate supporting agriculture in Georgia. The funds raised by the sale of this special license plate shall be evenly split between Georgia 4-H and the Georgia Association of Future Farmers of America to fund projects promoting agriculture in Georgia.

(36) A special license plate promoting the Georgia equine industry. The funds raised by the sale of this special license plate shall be disbursed to the Agricultural Commodity Commission for Equines.

(37) A special license plate promoting African American history and tourism in Georgia. The funds raised by the sale of this special license plate shall be disbursed to organizations dedicated to the preservation of African American history in Georgia.

(38) A special license plate honoring veterans who have been awarded the Bronze Star. The funds raised by the sale of this special

license plate shall be disbursed to the National Guard Family Foundation.

(39) A special license plate promoting the arts in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Council for the Arts.

(40) A special license plate supporting programs for the treatment of autism. The funds raised by the sale of this special license plate shall be disbursed to the Department of Behavioral Health and Developmental Disabilities for the support of programs for the treatment of autism in Georgia.

(41) A special license plate honoring the work of The Garden Club of Georgia, Inc. The funds raised by the sale of this special license plate shall be disbursed to The Garden Club of Georgia, Inc., and used to fund scholarships that are awarded by the club.

(42) A special license plate promoting the Georgia Junior Golf Foundation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Junior Golf Foundation.

(43) A special license plate commemorating 100 years of scouting in the United States. The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(44) A special license plate supporting Cobb County Public Schools. The funds raised by the sale of this special license plate shall be disbursed to the Cobb County Public Schools Educational Foundation and used to fund educational programs, grants to teachers, and scholarships in the Cobb County Public School System.

(45) A special license plate supporting the Georgia Sea Turtle Center. The funds raised by the sale of this special license plate shall be charged and disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund and used to fund nongame wildlife conservation and education programs. The design of the license plate provided for in this paragraph shall include the words "Jekyll Island — Georgia's Jewel" horizontally across the bottom of the plate in lieu of the county name, with a diamond jewel symbol in place of the dash.

(46) A special license plate commemorating and supporting the sport of soccer in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia State Soccer Association, Inc., for the development and promotion of soccer programs in the State of Georgia. Such license plate shall not include a space for a county decal but shall instead bear the legend "gasoccer.org".

(47) A special license plate for the Georgia Aquarium to support its mission as an entertaining, educational, and scientific institution and

to promote the conservation of aquatic biodiversity throughout the world. The funds raised by the sale of this special plate shall be disbursed to Georgia Aquarium, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Georgia Aquarium" in lieu of the name of the county of issuance.

(48) A special license plate for Zoo Atlanta to support its mission to inspire the citizens of Atlanta and Georgia and all visitors to the zoo to value wildlife on Earth; to help safeguard existing species through conservation by providing for an informative, educational, and engaging experience to all visitors; to carry out the responsible stewardship of the animals and the zoo facility; and to engage in related conservation activities and research. The funds raised by the sale of this special plate shall be disbursed to the Atlanta-Fulton County Zoo, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Protect Wildlife" in lieu of the name of the county of issuance.

(49) A special license plate supporting the Appalachian Trail. The funds raised by the sale of this special license plate shall be disbursed to the Appalachian Trail Conservancy and used to protect, maintain, and conserve the Georgia portion of the Appalachian Trail and connecting trails, and to promote awareness of wilderness, hiking, and back country recreation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "www.appalachiantrail.org".

(50) A special license plate supporting the Atlanta Braves Foundation. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Atlanta Braves Foundation and used in the foundation's philanthropic activities and charitable sponsorships. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Go Braves."

(m)(1) The General Assembly has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — \$25.00 of which \$24.00 is to be deposited into the general fund and \$1.00 to be paid to the local county tag agent;



(B) Special license plate fee — \$35.00 of which \$13.00 is to be deposited into the general fund and \$22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(C) Special license plate renewal fee — \$35.00 of which \$13.00 is to be deposited into the general fund and \$22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) A special license plate promoting the United States Disabled Athletes Fund, for the support of disabled athletes. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the United States Disabled Athletes Fund.

(3) A special license plate commemorating Civil War battlefields and historic sites. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Civil War Commission for the acquisition of Civil War battlefields and associated Civil War historic sites in this state and for the maintenance, protection, and interpretation of the same as provided by Article 5 of Chapter 7 of Title 50.

(4) A special license plate promoting historic preservation efforts. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Natural Resources for use by the Historic Preservation Division to fund historic preservation programs in the state through the Georgia historic preservation grant program as otherwise authorized by law.

(5) A special license plate promoting bicycle safety. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(6) A special license plate honoring families with a member serving in the military. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(7) A special license plate promoting "Support Georgia Troops." The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(8) A special license plate promoting NASCAR. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate renewal fee charged for the issuance and renewal of the NASCAR license plates authorized under this paragraph, \$10.25 shall be used by the department for purchasing plates from the supplier of the plates, as designated by NASCAR, and royalty costs, \$10.00 shall be deposited in the general fund, and \$14.75 shall be disbursed to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(9) A special license plate to support breast cancer related programs for the medically indigent. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of breast cancer license plates authorized under this paragraph, \$12.95 shall be deposited in the general fund and \$22.05 shall be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund cancer screening and treatment related to programs for those persons who are medically indigent and may have breast cancer. To the extent consistent with Article III, Section IX, Paragraph VI(i) of the Constitution and Article 6 of Chapter 8 of Title 31, such programs may include education, breast cancer screening, grants-in-aid to breast cancer victims, pharmacy assistance programs for breast cancer victims, and other projects to encourage public support for the special license plate and the activities which it funds. Such design shall include a logo the same as the United States postal stamp supporting breast cancer research and bearing the slogan "Fund the Fight. Find A Cure." over the sketch of a woman and the breast cancer awareness pink ribbon symbol.

(10) A special license plate to support prostate cancer related awareness and research programs. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of prostate cancer license plates authorized under this paragraph, \$13.00 shall be deposited in the general fund and \$22.00 shall be disbursed to the Georgia Prostate Cancer Coalition to fund prostate cancer awareness, research, screening, and treatment related programs.

(11) A special license plate to support lung cancer related awareness and research programs. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Joan Gaeta Lung Cancer Fund to fund lung cancer awareness, screening, research, and treatment related programs.

(12) A special license plate to support Georgia nurses and charitable and philanthropic efforts to support, advance, and promote the nursing profession. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Georgia Nurses Foundation of the Georgia Nurses Association for carrying out such programs and purposes. (Code 1981, § 40-2-86.21, enacted by Ga. L. 2006, p. 1094, § 12/HB 1053; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 668, §§ 4-6/SB 81; Ga. L. 2008, p. 832, §§ 2, 3/HB 1220; Ga. L. 2008, p. 1191, § 1/HB 963; Ga. L. 2009, p. 453, § 2-18/HB 228; Ga. L. 2009, p. 833, § 1/HB 639; Code 1981, § 40-2-86, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2010, p. 143, § 4.1/HB 1005; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 155, § 6/HB 732; Ga. L. 2013, p. 265, § 3/SB 121.)

**The 2012 amendment**, effective July 1, 2012, deleted the former second sentence of paragraph (a)(2), which read: “Any new special license plates adopted on or after July 1, 2010, that share a portion of the revenue raised with any agency, fund, nonprofit organization, or other similar entity shall allocate the revenue in accordance with the formula con-

tained in subsection (l) of this Code section.”; and added paragraphs (m)(10) through (m)(12).

**The 2013 amendment**, effective July 1, 2013, substituted “AID Atlanta” for “the AIDS Survival Project” twice in paragraph (l)(24); and added paragraphs (l)(49) and (l)(50).

**40-2-86.1. Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations — Plates to identify persons with diabetes, honor veterans of the armed services, and honor the Georgia Association of Realtors.**

(a) The General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and, subject to the appropriation process of the General Assembly, appropriating a portion of the funds raised from the sale of these special license plates is in the best interests of the people of this state. Therefore, the license plates listed in subsection (l) of this Code section shall be issued by the department if all of the requirements of subsections (b) through (k) of this Code section have been satisfied.

(b) The commissioner, in cooperation with the agency, fund, or nonprofit corporation sponsoring the special license plate, shall design special distinctive license plates intended to promote the program benefited by the sale of the special license plate. The special license plates must be of the same size as general issue motor vehicle license



plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of \$25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of a manufacturing fee of \$25.00 and a special license plate fee of \$35.00, in addition to the regular motor vehicle registration fee, shall be able to apply for a special license plate listed in subsection (l) of this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates, with the addition of a \$35.00 special license plate renewal fee, provided that special license plates issued pursuant to paragraph (9) of subsection (l) of this Code section shall be exempt from such special license plate renewal fee.

(e) The manufacturing fee, special license plate fee, and special license plate renewal fee derived from the sale of special license plates contained in subsection (l) of this Code section shall be deposited into the general fund. The sponsoring agency, fund, or nonprofit corporation, subject to the appropriation process of the General Assembly, may request that the funds derived from the sale of special license plates be appropriated to the department for disbursement to such agency, fund, or nonprofit corporation.

(f) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency,

fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized must be the same as those specified in subsection (l) of this Code section authorizing the potential appropriation to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(g) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached, upon the payment of any applicable registration fees, the manufacturing fee, and the special license plate fee.

(h) No special license plate authorized pursuant to subsection (l) of this Code section shall be issued except upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fee. The special license plate shall have an application period of two years from the date of authorization for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fee, and all fees shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fee, the sponsor shall not be entitled to a refund.

(i) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to renew such special license plate during his or her annual registration period upon payment of an additional \$35.00 special license plate renewal fee, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time

during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(j) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(k) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(l)(1) The General Assembly has determined that license plates promoting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated and the revenue shall be deposited in the general fund, subject to the appropriation process of the General Assembly.

(2) A special license plate identifying persons with diabetes. The main purpose of the special license plate is that law enforcement officers and emergency personnel will be alerted to the potential for special needs before they approach the driver of a vehicle, especially if the vehicle has been involved in an accident. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(3) A special license plate honoring all veterans who have served in the armed services of the United States. All of these men and women have sacrificed a portion of their lives in order to serve their country and protect our freedom. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(4) A special license plate honoring the Georgia Association of Realtors. The Association is being honored for its long-standing support of housing opportunities for all citizens of this state, private property rights, and all organizations that assist people in achieving the American dream of home ownership. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(5) A special license plate honoring Georgia municipal clerks. The municipal clerk's office provides the professional link connecting citizens with their local governing bodies and agencies of government at other levels. The funds raised by the sale of this license plate shall be deposited in the general fund.

(6) A special license plate identifying residents of the State of Georgia who hold an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission. The special license plate shall be inscribed with the official amateur radio call letters of such applicant as assigned by the Federal



Communications Commission. The funds raised by the sale of this license plate shall be deposited in the general fund.

(7)(A) A special license plate to be issued for alternative fueled vehicles, which license plate shall be similar in design to the license plate issued to all other residents of the state except that the commissioner shall place a distinctive logo or emblem on the license plate which shall distinguish the vehicle as an alternative fueled vehicle eligible to travel in travel lanes designated for such vehicles under paragraph (4) of subsection (a) of Code Section 32-9-4. The words "alternative fueled vehicle" shall be imprinted on such special license plate in lieu of the county name decal. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) As used in this paragraph, the term:

(i) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more or such other percentage, but not less than 70 percent, as determined by the United States secretary of energy, by rule as it existed on January 1, 1997, to provide for requirements relating to cold start, safety, or vehicle functions, by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; electricity including electricity from solar energy; and any other fuel the United States secretary of energy determined by rule as it existed on January 1, 1997, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(ii) "Alternative fueled vehicle" means:

(I) Any vehicle fueled by alternative fuel as defined in division (i) of this subparagraph; or

(II) A hybrid vehicle, which means a motor vehicle which draws propulsion energy from onboard sources of stored energy which include an internal combustion or heat engine using combustible fuel and a rechargeable energy storage system; and, in the case of a passenger automobile or light truck, means for any 2000 and later model, a vehicle which has received a certificate of conformity under the Clean Air Act, 42 U.S.C. Section 7401, et seq., and meets or exceeds the equivalent qualifying California low-emission vehicle standard under Section 243(e)(2) of the Clean Air Act, 42 U.S.C. Section 7583(c)(2), for that make and model year or, for any 2004 and later model, a vehicle which has received a certificate that such

vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the administrator of the Environmental Protection Agency under Section 202(i) of the Clean Air Act, 42 U.S.C. Section 7521(i), for that make and model year vehicle and which achieves a composite label fuel economy greater than or equal to 1.5 times the Model Year 2002 EPA composite class average for the same vehicle class and which is made by a manufacturer.

(8) A special license plate for antique or hobby or special interest vehicles. As used in this paragraph, the term “antique or hobby or special interest vehicle” means any motor vehicle or motor cycle or a motor vehicle which has been designed and manufactured to resemble an antique or historical vehicle and which is owned as a collector’s item and for participation in club activities, exhibitions, tours, parades and similar uses but which may be used for general transportation. No owner of such antique vehicle or hobby or special interest vehicle shall be required to obtain any special permits for its operation on the roads of this state. The funds raised by the sale of this license plate shall be deposited in the general fund.

(9)(A) A special license plate for owners of a private passenger car or truck used for personal transportation, who are firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 and who are members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and motor vehicle owners who are certified firefighters of legally organized volunteer fire departments which have been certified pursuant to Article 2 of Chapter 3 of Title 25. Such license plate shall be inscribed with such letters, numbers, words, symbols, or a combination thereof as determined by the commissioner to identify the owner as a certified firefighter. The chiefs of the various fire departments shall furnish to the commissioner a list of the certified firefighters of their fire departments who reside in Georgia which list shall be updated as necessary. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) Should a certified firefighter who has been issued a special and distinctive license plate be separated from such firefighter’s department for any reason other than retirement from employment, the chief of such fire department shall obtain the separated member’s license plate at the time of the separation and shall forward same to the commissioner along with a certificate to the effect that such person has been separated, and thereupon the commissioner shall reissue a regular license plate, at no additional charge, to such former certified firefighter to replace the special and distinctive plate. Should a certified firefighter return to service

with the same or another fire department, the chief of such fire department shall likewise secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has become a member of the fire department, and the effective date thereof, whereupon the commissioner shall, upon application and upon the payment of a \$35.00 manufacturing fee and all other applicable registration and licensing fees at the time of registration, reissue a special and distinctive license plate to such new member to replace the returned regular plate. Upon such request for a change in plate for a certified firefighter who is separated from a fire department, the chief of the fire department shall furnish such member with a copy of the chief's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(C) Motor vehicle owners who were firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 or were members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and who retired from employment as such shall continue to be eligible for the firefighter license plates issued under this paragraph the same as if they continued to be certified and employed as firefighters. Whenever such a certified firefighter who has been issued a special and distinctive license plate is retired from employment with such firefighter's department, the chief of such fire department shall forward to the commissioner a certificate to the effect that such person has been retired.

(D) The spouse of a deceased firefighter shall continue to be eligible to be issued a distinctive special firefighter's license plate as provided in this paragraph so long as such person does not remarry.

(10) A special license plate supporting Rotary International. The design of the special license plate, excepting only the Rotary International logo and motto "Service Above Self" and the years 1905-2005 and any other part of the design owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The funds raised by the sale of this license plate shall be deposited in the general fund.

(11) A special license plate for any Georgia resident who is the owner of a private passenger motor vehicle and provides proof of certification or licensure by the State of Georgia as an emergency medical technician, paramedic, or owner of a licensed ambulance service in the State of Georgia promoting the EMS Star of Life Symbol. Such license plate shall display the National Highway



Traffic Safety Administration’s EMS Star of Life Symbol and the initials “EMS.” The funds raised by the sale of this license plate shall be deposited in the general fund. (Code 1981, § 40-2-86.22, enacted by Ga. L. 2006, p. 421, § 1/HB 710; Ga. L. 2007, p. 668, § 7/SB 81; Code 1981, § 40-2-86.1, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2012, p. 155, § 7/HB 732; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2012 amendment**, effective July 1, 2012, added the proviso at the end of subsection (d).

**The 2013 amendment**, effective April

24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (1)(6).

ARTICLE 3A

RECIPROCAL AGREEMENTS FOR REGISTRATION OF

COMMERCIAL VEHICLES

40-2-88. Reciprocal agreements for registration of commercial vehicles on apportionment basis; waiver of penalties.

(a) In addition to and regardless of the provisions of Article 3 of this chapter or any other provisions of law relating to the operation of motor vehicles over the public highways of this state, the commissioner is authorized to enter into reciprocal agreements or plans on behalf of the State of Georgia with the appropriate authorities of any of the states of the United States, the District of Columbia, a state or province of any foreign country, or a territory or possession of the United States or any foreign country providing for the registration of commercial vehicles on an apportionment basis and may, in the exercise of this authority, enter and become a member of the International Registration Plan developed by the American Association of Motor Vehicle Administrators. Any such reciprocal agreement or plan may provide for but shall not be limited to the following provisions: (1) full reciprocity in accordance with such agreement or plan for commercial vehicles not based in Georgia, which vehicles are operated in interstate commerce or a combination of interstate and intrastate commerce and are of specified types or weights, in exchange for equivalent reciprocity for Georgia based commercial vehicles; (2) reciprocal exchange of audits of records of the owners of such commercial vehicles by the states participating in any such agreement or plan; and (3) any other matters which would facilitate the administration of such agreement or plan, including exchange of information for audits enforcement activities and collection and disbursement of proportional registration fees for other jurisdictions in the case of Georgia based commercial vehicles.

(b) Any reciprocity agreement, arrangement, or declaration relating to commercial vehicles in effect between this state and any jurisdiction

not a party to such reciprocal agreement or plan or which relates to any matters not covered in such reciprocal agreement or plan shall continue in force and effect until specifically revoked or amended as provided by law.

(c)(1)(A) Applications for registration or renewal of registration under the International Registration Plan may be submitted during the period of December 1, 2001, to February 15, 2002, for registration under such plan which shall be valid for a period beginning January 1, 2002, and ending at the conclusion of the applicable registration period specified in division (a)(1)(A)(ii) of Code Section 40-2-21 which occurs between July 1, 2002, and June 30, 2003.

(B) On and after July 1, 2002, applications for annual registration or renewal of registration under the International Registration Plan shall be submitted during the applicable registration period specified in division (a)(1)(A)(ii) of Code Section 40-2-21.

(2) Any owner of a vehicle required to be registered under the International Registration Plan who does not apply for registration on or before the first day of the registration period for such vehicle as prescribed in paragraph (1) of this subsection, in addition to any other penalty which may be imposed if such vehicle is not timely registered in accordance with paragraph (1) of this subsection, shall be subject to a late application penalty of 10 percent of the total registration fees due this state. Additionally, the owner of a vehicle required to be registered under the International Registration Plan who does not pay to the commissioner the registration fees due this state on or before the last day of the registration period shall be subject to a late payment penalty in accordance with Code Section 40-2-40. The commissioner may provide by rule or regulation for waiver of penalties provided by this paragraph in cases where failure to timely make application or timely pay fees is due to force majeure.

(d) The provisions of Code Sections 40-2-9, 40-2-22, 40-2-23, 40-2-24, and 40-2-26 shall not apply to vehicles registered under this Code section, except that:

(1) Registration under the International Registration Plan shall not relieve a registrant from any other taxes due, except as otherwise provided in subsection (h) of Code Section 40-2-152, and registration shall be denied any such vehicle if any Georgia ad valorem property taxes due upon such vehicle are unpaid;

(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle subject to the heavy vehicle tax unless the owner of the motor vehicle provides satisfactory proof that the heavy vehicle tax imposed by Subchapter D of Chapter 36 of the Internal Revenue

Code has been paid for the federal tax year during which the application for registration or renewal thereof is made or that a heavy motor vehicle tax return has been filed with the Internal Revenue Service for the federal tax year during which the application for registration or renewal thereof is made; and

(3) No vehicle registration or renewal thereof shall be issued without the commissioner's having first received certification that the vehicle sought to be licensed is insured in compliance with the mandatory provisions of Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act."

(e) In the event of conflict between the provisions of this Code section or any agreement entered into under the provisions of this Code section and any other law or provision on this subject, the provisions of this Code section or any agreement entered into under the provisions of this Code section shall prevail.

(f) Each motor carrier registered under the International Registration Plan shall maintain and keep, for the current year and the three preceding years, such pertinent records and papers as may be required by the commissioner for the reasonable administration of this chapter. If a registrant fails to make records available to the commissioner upon proper request or if any registrant fails to maintain records from which its true liability may be determined, the commissioner may, 30 days after written demand for production of or access to the records or notification of insufficient records, impose an assessment of liability based on the commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the commissioner at his or her own instance, information available to the commissioner concerning operations by similar registrants, and such other pertinent information as may be available to the commissioner.

(g) The commissioner or any authorized agent of the commissioner is authorized to examine the records, books, papers, and equipment of any motor carrier that are deemed necessary to verify the truth and accuracy of any statement or report and ascertain whether the tax imposed by Code Section 40-2-152 and the International Registration Plan has been properly paid. The duties and powers of the commissioner as specified in Code Sections 48-2-7 through 48-2-11 are expressly made applicable to this Code section.

(h) In lieu of full registration under the International Registration Plan, trip permit registration may be issued for any vehicle or combination of vehicles which could be lawfully operated in the state if full registration or apportioned registration were obtained. A person desiring a trip permit shall make application therefor as prescribed by the



commissioner. A trip permit shall be issued for the sum of \$30.00. Any vehicle or combination of vehicles for which a trip permit has been issued may be operated in interstate or intrastate commerce in Georgia for a period of 72 hours from the time of issuance.

(i) The department is authorized and empowered to promulgate and to enforce such rules and regulations, including without limitation rules and regulations providing for appointment and regulation of private tag agents and use of electronic and direct registration methods, and to publish such forms as may be necessary to carry out the provisions of the International Registration Plan or any other agreement entered into under the authority set forth in this Code section.

(j) Any person who violates any provision of this Code section shall, in addition to any other penalties provided by any other law, be punished by a fine of not less than \$100.00 and not more than \$250.00. (Code 1981, § 40-2-88, enacted by Ga. L. 1990, p. 1883, § 2; Ga. L. 1992, p. 2978, § 3; Ga. L. 1999, p. 741, § 2; Ga. L. 2000, p. 951, § 3-15; Ga. L. 2001, p. 1173, § 1-3; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2013, p. 32, § 1/HB 463.)

**The 2013 amendment**, effective April 10, 2013, inserted “, except as otherwise provided in subsection (h) of Code Section 24 40-2-152,” in the middle of paragraph (d)(1). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General

Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

## ARTICLE 6A

### ADMINISTRATION OF FEDERAL UNIFIED CARRIER REGISTRATION ACT OF 2005

**40-2-140. (For effective date, see note.) Department of Public Safety to administer provisions of this article; registration and fee requirements; evidence of continuing education; requirements for obtaining operating authority; collection, retention, and utilization of fees; regulatory compliance inspections; penalties.**

(a) As used in this Code section, the term “commissioner” means the commissioner of public safety.

(b) The Department of Public Safety shall be the state agency responsible for the administration of the federal Unified Carrier Registration Act of 2005, which includes participating in the development, implementation, and administration of the Unified Carrier Registration Agreement.

(c) Every foreign or domestic motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in interstate commerce in this state shall register with the commissioner or a base state and pay all fees as required by the federal Unified Carrier Registration Act of 2005.

(d)(1) Any motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in intrastate commerce and operates a motor vehicle on or over any public highway of this state shall register with the commissioner and pay a fee determined by the commissioner.

(2) No motor carrier shall be issued a registration unless there is filed with the commissioner or the Federal Motor Carrier Safety Administration or any successor agency a certificate of insurance for such applicant or holder, on forms prescribed by the commissioner, evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state. Such policy shall provide for the protection of passengers in passenger vehicles and the protection of the public against the negligence of such motor carrier, and its servants or agents, when it is determined to be the proximate cause of any injury. The commissioner shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. Failure to file any form required by the commissioner shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer. The insurer may file its certificate of insurance electronically with the commissioner.

(3) The commissioner shall have the power to permit self-insurance in lieu of a policy of indemnity insurance whenever in his or her opinion the financial ability of the motor carrier so warrants.

(4) Any person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier.

(e) Before any motor carrier engaged in exempt passenger intrastate commerce shall operate any motor vehicle on or over any public highway of this state, the motor carrier shall register with the commissioner and pay a fee determined by the commissioner.

(f) Before any motor carrier shall be registered under the federal Unified Carrier Registration Act of 2005 by the Department of Public Safety, that carrier shall furnish evidence to the Department of Public Safety that the carrier, through an authorized representative, has completed, within the preceding 12 months, an educational seminar on motor carrier operations and safety regulations that has been certified by the commissioner.

(g) In addition to any requirements under the federal Unified Carrier Registration Act of 2005, motor carriers required to have operating authority shall fulfill all applicable requirements for obtaining operating authority prior to any operation of a motor vehicle to which such requirements apply.

(h) The commissioner shall collect the fees imposed by this Code section and may establish rules and regulations and prescribe such forms as are necessary to administer this Code section and the federal Unified Carrier Registration Act of 2005. Notwithstanding the provisions of Code Section 40-2-131, the commissioner shall retain and utilize such fees for motor carrier safety programs and enforcement and administration of this article.

(i) The commissioner, and persons he or she designates pursuant to Chapter 2 of Title 35, shall have the authority to perform regulatory compliance inspections under the provisions of Article 5 of Chapter 2 of Title 35 for purposes of determining compliance with laws and regulations, the enforcement and administration of which is the responsibility of the Department of Public Safety.

(j) Every officer, agent, or employee of any corporation and every person who fails to comply with this article or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for in Chapter 13 of this title. (Code 1981, § 40-2-140, enacted by Ga. L. 2009, p. 629, § 2/HB 57; Ga. L. 2011, p. 479, § 10.2/HB 112; Ga. L. 2013, p. 756, § 2/HB 255.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2014. For version of this Code section in effect until July 1, 2014, see the bound volume.

**The 2013 amendment,** effective July 1, 2014, added subsection (a); redesignated former subsection (a) as present subsection (b); and, in subsections (b) and (f), substituted “Department of Public Safety” for “Department of Revenue”; redesignated former subsections (b) through (d.1) as present subsections (c) through (f), respectively; and, in subsection (f), inserted “federal” near the beginning and substituted “Department of Public Safety” for “department” near the middle; red-

esignated former subsections (e) through (h) as present subsections (g) through (i), respectively; and, in subsection (h), substituted “Code Section 40-2-131” for “Code Sections 40-2-131 and 48-2-17” in the second sentence; and, in subsection (i), deleted “of public safety” following “The commissioner”; and, in the middle of the first sentence of subsection (j), deleted “and any order, rule, or regulation of the Public Service Commission, Department of Public Safety, or Department of Revenue,” following “comply with this article”.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, “of” was inserted near the end of subsection (a).



ARTICLE 7

MOTOR VEHICLE LICENSE FEES AND CLASSES

40-2-152. Fees for apportionable vehicles; restricted license plates for vehicles.

(a) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles not operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1) Less than 30,001 lbs. ....	\$ 45.00
(2) 30,001 to 36,000 lbs. ....	70.00
(3) 36,001 to 44,000 lbs. ....	115.00
(4) 44,001 to 54,999 lbs. ....	190.00
(5) 55,000 to 63,280 lbs. ....	300.00
(6) 63,281 lbs. to maximum permitted .....	400.00

(b) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1) Less than 30,001 lbs. ....	\$ 85.00
(2) 30,001 to 36,000 lbs. ....	130.00
(3) 36,001 to 44,000 lbs. ....	215.00
(4) 44,001 to 54,999 lbs. ....	365.00
(5) 55,000 to 63,280 lbs. ....	575.00
(6) 63,281 lbs. to maximum permitted .....	725.00

(c) For each apportionable motor bus or van-type vehicle, the fee shall be \$3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee amount shall exceed \$875.00.

(d) Trucks transporting logs, pulpwood, or other forest products shall be issued restricted license plates and the fees shall be as enumerated in Code Section 40-2-151.

(e) Each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and his or her immediate family shall be issued a restricted license plate for the sum of \$5.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and

from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be issued a restricted license plate for the sum of \$5.00 in the same manner as school buses when the bus complies with the laws applicable to school buses.

(f) A truck or a truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(g) A farm vehicle shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(h) Only for apportionable vehicles registered under subsection (a), (b), or (c) of this Code section:

(1) Each such apportionable vehicle shall be subject to an annual alternative ad valorem tax on such apportionable vehicle as authorized under Article VII, Section I, Paragraph (b)(3) of the Constitution. Such alternative ad valorem tax shall be in the amount specified in subsection (k) of this Code section and shall be collected by the commissioner at the same time as the registration fee required under subsection (a), (b), or (c) of this Code section;

(2) Notwithstanding the provisions of Code Section 48-5-442.1, no ad valorem tax shall be assessed against such apportionable vehicle other than the alternative ad valorem tax under this Code section except that such apportionable vehicle shall not be relieved for any such ad valorem tax which accrued and was due and payable prior to registration under the International Registration Plan; and

(3) The full amount of such alternative ad valorem tax proceeds shall not constitute fees for purposes of Code Section 40-2-131. Such proceeds shall be retained by the commissioner in a separate, segregated account for the purpose of allocation and distribution under subsection (m) of this Code section.

(i) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, the apportioned value for ad valorem taxes shall be determined as provided in Code Section 48-5-442.1.

(j) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, payment of ad valorem taxes shall be accepted by the department upon request of the taxpayer regardless of the county in which such trailer is domiciled.

(k) Each apportionable vehicle identified under subsection (a), (b), or (c) of this Code section shall be subject to an alternative ad valorem tax

which shall be determined by the value and rate assigned to each weight class. Each weight class shall be a separate subclass of motor vehicle, and the value of each vehicle shall remain the value for each tax year as follows:

- (1) Less than 30,001 lbs. shall be valued at \$15,000.00 and taxed at \$50.00 per year;
- (2) 30,001 to 36,000 lbs. shall be valued at \$25,000.00 and taxed at \$75.00 per year;
- (3) 36,001 to 44,000 lbs. shall be valued at \$40,000.00 and taxed at \$125.00 per year;
- (4) 44,001 to 54,999 lbs. shall be valued at \$55,000.00 and taxed at \$175.00 per year;
- (5) 55,000 to 63,280 lbs. shall be valued at \$75,000.00 and taxed at \$225.00 per year; and
- (6) 63,281 lbs. to maximum permitted shall be valued at \$95,000.00 and taxed at \$275.00 per year.

(l) The commissioner shall add the alternative ad valorem tax in subsection (k) of this Code section to the vehicle registration fees in subsection (a), (b), or (c) of this Code section, prior to apportionment of those fees. The alternative ad valorem tax shall be apportioned on the same basis and in the same manner as the apportionable registration fees and collected at the same time.

(m)(1) The alternative ad valorem tax imposed by this Code section shall be collected by the commissioner and shall be distributed annually from the separate, segregated fund not later than April 1 of the calendar year immediately following the calendar year in which such taxes were paid to the commissioner, in the manner provided for in this subsection.

(2) Each year, the distributions of alternative ad valorem tax proceeds under this subsection shall be based upon the immediately preceding year's tax digest of each participating tax authority submitted to and approved by the commissioner. If such digest has not been submitted and approved, the commissioner shall, for purposes of this subsection, utilize in its place the most recently submitted and approved tax digest of such participating tax jurisdiction.

(3)(A) One percent of the alternative ad valorem tax collected by the commissioner shall be paid into the general fund of the state treasury in order to defray costs of administration.

(B) Except for the amount provided in subparagraph (A) of this paragraph, the remaining proceeds of the alternative ad valorem



tax shall be divided among each tax jurisdiction of this state. Such tax jurisdictions shall be limited to only a county, municipality, county school district, and independent school district which levies or causes to be levied for their benefit a property tax on real and tangible personal property.

(C) The distribution shall be made according to the proportion that the amount of ad valorem taxes to be collected by a tax jurisdiction under the tax digest specified under paragraph (2) of this subsection bears to the total amount of ad valorem taxes to be collected for all purposes applicable to real and tangible personal property in this state for the immediately preceding calendar year. (Code 1981, § 48-10-2.1, enacted by Ga. L. 1990, p. 1883, § 6; Ga. L. 1992, p. 771, § 28; Code 1981, § 40-2-152, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5; Ga. L. 2004, p. 1063, § 2; Ga. L. 2008, p. 835, § 5/SB 437; Ga. L. 2013, p. 32, § 2/HB 463.)

**The 2013 amendment**, effective April 10, 2013, in subsection (c), substituted “vehicle, the fee shall be” for “vehicle the fee is” in the first sentence, and inserted “amount” in the second sentence; inserted “or her” in the first sentence of subsection (e); and added subsections (h) through (m). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 32,

§ 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

#### **40-2-162. Apportionment of cost of annual license fees of motor buses to motor common carriers of passengers for hire operating partially outside state; formula; rules.**

(a) The commissioner shall apportion the cost of the annual fees for the licensing of motor buses to motor common carriers of passengers for hire operating a fleet of two or more motor buses either interstate, or both interstate and intrastate, under the authority of the Federal Motor Carrier Safety Administration and the Department of Public Safety of this state. The apportionment shall be done so that the total cost of the fees shall bear the same proportion to the annual fees for motor buses as the total number of miles traveled by the fleet of the carrier in this state in both interstate and intrastate operations during the preceding year bears to the total number of miles traveled by the fleet during the year in both interstate and intrastate operations.

(b) The commissioner shall promulgate rules for the apportionment required by this Code section. The rules shall provide that the apportionment apply as nearly as practicable to each class of vehicle operated by the motor common carrier of passengers for hire. (Ga. L. 1957, p. 653, § 1; Code 1933, § 91A-5312, enacted by Ga. L. 1978, p. 309, § 2; Code

1981, § 48-10-12; Code 1981, § 40-2-162, as redesignated by Ga. L. 2002, p. 1074, § 1; Ga. L. 2012, p. 580, § 9/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration and the Department of Public Safety” for “Interstate Commerce Commission or under author-

ity of both the Interstate Commerce Commission and the Public Service Commission” near the end of the first sentence in subsection (a).

CHAPTER 3

CERTIFICATES OF TITLE, SECURITY INTERESTS, AND LIENS

Article 2		Sec.	
Certificates of Title			
Sec.			molished vehicles or trailers; salvage certificate of title; administrative enforcement; removal of license plates.
40-3-26.	Delivery of certificate; notice to junior security interest holders and lienholders; disposition of certificate when first lien or security interest satisfied.		Article 3
			Security Interests in and Liens on Motor Vehicles
40-3-36.	Cancellation of certificate of title for scrap, dismantled, or de-	40-3-56.	Satisfaction of security interests and liens.

ARTICLE 1

GENERAL PROVISIONS

40-3-4. Exclusions.

JUDICIAL DECISIONS

1990 camper did not qualify for exclusion. — Current version of O.C.G.A. § 40-3-4(14)(A) provides that no certificate of title is needed for vehicles manufactured prior to 1986. The camper here was a 1990 model and therefore the camper did not qualify under the exclusion; according to the statute as revised, a certificate of title would be required for a 1990 camper. In re Blair, No. 05-20151, 2005 Bankr. LEXIS 3547 (Bankr. S.D. Ga. June 2, 2005).

## ARTICLE 2

## CERTIFICATES OF TITLE

**40-3-26. Delivery of certificate; notice to junior security interest holders and lienholders; disposition of certificate when first lien or security interest satisfied.**

(a)(1) The certificate of title shall be mailed or delivered to the holder of the first security interest or lien named in it. In the event there is no security interest holder or lienholder named in such certificate, the certificate of title shall be mailed or delivered directly to the owner.

(2) The commissioner may enter into agreements with any such security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such security interest or lien. On or after January 1, 2013, the commissioner shall require that security interest holders and lienholders receive notice of recordings of security interests and liens electronically. Such requirement may be phased in based on criteria designated by the commissioner through duly adopted rules and regulations. Such security interest or lien shall remain on the official records of the department until such time as the security interest or lien is released by secure electronic measures or affidavit of lien or security interest release; after which release, or at the request of the lienholder or security interest holder, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or as otherwise provided by paragraph (1) of this subsection without payment of any fee provided by Code Section 40-3-38.

(3) If the certificate of title has not been electronically delivered as provided for in paragraph (2) of this subsection, in lieu of delivering a certificate of title, the commissioner may deliver to any security interest holder or lienholder a confirmation form stating the certificate of title is available for printing:

(A) When such confirmation is presented to the commissioner's duly authorized county tag agent or to the commissioner requesting delivery of the title in accordance with this Code section;

(B) When the security interest or lien is satisfied and the confirmation form is delivered to the owner stating the security interest or lien is satisfied and released. The owner may then present the confirmation letter to the commissioner's duly authorized county tag agent or the commissioner for printing in accordance with this Code section; or



(C) When the security interest holder or lienholder delivers the confirmation form to the commissioner's duly authorized county tag agent or the commissioner stating the security interest or lien is satisfied and released and provides an alternate delivery address to include any subsequent security interest holder, lienholder, vehicle dealer, or other business with an interest in such vehicle.

(4) In the event the confirmation form is lost or stolen, the security interest holder or lienholder shall file an affidavit stating the circumstances under which the confirmation form was lost or stolen. Upon receipt, the commissioner shall deliver a certificate of title in accordance with this Code section.

(b) If the certificate of title is mailed to a security interest holder or lienholder, such person shall notify by mail all other lien or security interest holders that such person has received the certificate of title. The notice shall inform the security interest holder or lienholder of the contents and information reflected on such certificate of title. Such mailing or delivery shall be within five days, exclusive of holidays, after the receipt of the certificate by the holder of any security interest or lien.

(c) The security interest holder or lienholder may retain custody of the certificate of title until such security interest holder's or lienholder's claim has been satisfied. The security interest holder or lienholder having custody of a certificate of title must deliver the certificate of title to the next lienholder or security interest holder within ten days after such custodial security interest holder's or lienholder's lien or security interest has been satisfied and, if there is no other security interest holder or lienholder, such custodial security interest holder or lienholder must deliver the certificate of title to the owner.

(d) If a lien or security interest has been electronically recorded, the release of such lien or security interest will require the lienholder to notify the commissioner and the owner of the vehicle, on a form prescribed by the commissioner, or by electronic means approved by the commissioner, of the release of the lien or security interest. Such notice will inform the owner that such owner may request a title free of lien, upon verification of such owner's current mailing address, from the commissioner as provided in Code Section 40-3-56. (Ga. L. 1961, p. 68, § 12; Ga. L. 1962, p. 79, § 9; Ga. L. 1964, p. 436, § 3; Ga. L. 1965, p. 304, § 1; Ga. L. 1974, p. 594, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 10; Ga. L. 2000, p. 951, § 4-5; Ga. L. 2010, p. 143, § 7/HB 1005; Ga. L. 2012, p. 580, § 2/HB 865.)

**The 2012 amendment**, effective July 1, 2012, added the second and third sentences in paragraph (a)(2).

**40-3-32. Transfer of vehicle generally.****JUDICIAL DECISIONS****Substantial compliance.**

Trial court erred in denying the state's in rem forfeiture action and adjudicating a husband an innocent owner of a vehicle the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband as-

signed his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure; thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. *State v. Centers*, 310 Ga. App. 413, 713 S.E.2d 479 (2011).

**40-3-36. Cancellation of certificate of title for scrap, dismantled, or demolished vehicles or trailers; salvage certificate of title; administrative enforcement; removal of license plates.**

(a)(1) Any registered owner or authorized agent of a registered owner who in any manner sells or disposes of any vehicle, including a trailer, as scrap metal or parts only or who scraps, dismantles, or demolishes a vehicle shall within 72 hours mail or deliver the certificate of title to the commissioner for cancellation.

(2) Notwithstanding any other provision of this article to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle, including a trailer, to be transferred, or has lost the title for the vehicle or trailer to be transferred, he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle or trailer is at least 12 model years old and is worth \$850.00 or less if the vehicle was used as a motor vehicle, or \$1,700.00 or less if the vehicle was used as a trailer. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts dealer under Code Section 43-47-7 or scrap metal processor under Code Section 43-43-1. The department shall promulgate a form for the statement which shall include, but not be limited to:

(A) A statement that the vehicle or trailer shall never be titled again; it must be dismantled or scrapped;

(B) A description of the vehicle including, where applicable, the year, make, model, vehicle identification number, and color;

(C) The name, address, and driver's license number of the owner;

(D) A certification that the owner:

- (i) Never obtained a title to the vehicle in his or her name; or
- (ii) Was issued a title for the vehicle, but the title was lost or stolen; -

(E) A certification that the vehicle:

- (i) Is worth \$850.00 or less, or \$1,700.00 or less if the vehicle is a trailer;
- (ii) Is at least 12 model years old; and
- (iii) Is not subject to any secured interest or lien;

(F) An acknowledgment that the owner realizes this form will be filed with the department and that it is a felony, punishable by imprisonment for not fewer than one nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00, or both, to knowingly falsify any information on this statement;

(G) The owner's signature and the date of the transaction;

(H) The name, address, and National Motor Vehicle Title Information System identification number of the business acquiring the vehicle;

(I) A certification by the business that \$850.00 or less, or \$1,700.00 or less if the vehicle is a trailer, was paid to acquire the vehicle;

(J) A certification that the business has verified by an on-line method determined by the commissioner that the vehicle is not currently subject to any secured interest or lien; provided, however, that such certification shall not be required until such an on-line method has been established and is available; and

(K) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.

(3)(A) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall mail or otherwise deliver the statement required under paragraph (2) of this subsection to the department within 72 hours of the completion of the transaction, requesting that the department cancel the Georgia certificate of title and registration.

(B) Notwithstanding the requirement to mail or otherwise deliver the statement required under paragraph (2) of this subsection to the department, the department shall provide a mechanism for the receipt of the information required to be obtained in the statement by electronic means, at no cost to the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor,



in lieu of the physical delivery of the statement, in which case the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall maintain the original statement for a period of not less than two years.

(C) Within 48 hours of each day's close of business, the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver in a format approved by the department, either by facsimile or by other electronic means to be made available by the department by January 1, 2012, a list of all such vehicles purchased that day for scrap or for parts. That list shall contain the following information:

- (i) The name, address, and contact information for the reporting entity;
- (ii) The vehicle identification numbers of such vehicles;
- (iii) The dates such vehicles were obtained;
- (iv) The names of the individuals or entities from whom the vehicles were obtained, for use by law enforcement personnel and appropriate governmental agencies only;
- (v) A statement of whether the vehicles were, or will be, crushed or disposed of, or offered for sale or other purposes;
- (vi) A statement of whether the vehicle is intended for export out of the United States; and
- (vii) The National Motor Vehicle Title Information System identification number of the business acquiring the vehicle.

There shall be no charge to a secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor associated with providing this information to the department.

(D) For purposes of this subsection, the term "motor vehicle" shall not include a vehicle which has been crushed or flattened by mechanical means such that it is no longer the motor vehicle as described by the certificate of title, or such that the vehicle identification number is no longer visible or accessible, in which case the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall verify that the seller has reported the vehicles in accordance with this subsection. Such verification may be in the form of a certification from the seller or contract between the seller and the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor which clearly identifies the seller by a government issued photograph identification card, or em-

player identification number, and shall be maintained for a period of not less than two years.

(E) The information obtained by the department in accordance with this subsection shall be reported to the National Motor Vehicle Title Information System, in a format which will satisfy the requirement for reporting this information, in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.

(F) The information obtained by the department in accordance with this subsection shall be made available only to law enforcement agencies, and for purposes of canceling certificates of title, and shall otherwise be considered to be confidential business information of the respective reporting entities.

(G) All records required under the provisions of this Code section shall be maintained for a period of two years by the reporting entity and shall include a scanned or photocopied copy of the seller's or seller's representative's driver's license or state issued identification card.

(4)(A) The registered owner of any motor vehicle which is damaged to the extent that its restoration to an operable condition would require the replacement of the front clip assembly, which includes the fenders, hood, and bumper; the rear clip assembly, which includes the quarter panels, the floor panel assembly, and the roof assembly, excluding a soft top; the frame; and a complete side, which includes the fenders, door, and quarter panel shall mail or deliver the certificate of title to the commissioner for cancellation.

(B) A motor vehicle owner who retains possession of a damaged vehicle which is a salvage motor vehicle as defined in paragraph (11) of Code Section 40-3-2 shall surrender the license plates and registration for such vehicle, shall not operate such vehicle upon the roads of this state, and shall not sell, trade, or otherwise dispose of such vehicle prior to obtaining a salvage certificate of title for such vehicle.

(C) Any insurance company which acquires a damaged motor vehicle by virtue of having paid a total loss claim shall mail or deliver the certificate of title to the commissioner for cancellation. In every case in which a total loss claim is paid and the insurance company does not acquire such damaged motor vehicle, the insurance company paying such total loss claim, the vehicle owner, and the lienholder or security interest holder, as applicable, shall take the following steps to secure a salvage certificate of title for such motor vehicle:

(i) If the vehicle owner is in possession of the certificate of title, the owner shall deliver the certificate of title to the

insurance company prior to any payment of the claim, and the insurance company shall mail or deliver the certificate of title, an application for a salvage certificate of title, and the form provided by the commissioner for issuance of a salvage certificate of title;

(ii) If the certificate of title has been lost, destroyed, or misplaced, the vehicle owner shall, prior to payment of the claim on such vehicle, complete an application for a replacement title on the form provided by the commissioner and deliver such application and form to the insurance company and the insurance company shall mail or deliver such application and form to the commissioner for issuance of a replacement original title marked salvage;

(iii) If the lienholder or security interest holder has possession of the certificate of title, the vehicle owner shall complete an application for a replacement title on a form provided by the commissioner and shall deliver the completed form to the insurance company prior to the payment of the claim; the insurance company shall thereafter mail or deliver the application to the commissioner with notice of the payment of the total loss claim and the name and address of the lienholder or security interest holder in possession of the title. The commissioner shall mail notice to the lienholder or security interest holder that a total loss claim has been paid on the vehicle and that the title to such vehicle has been canceled, and the commissioner shall provide to the lienholder or security interest holder a salvage certificate of title for such vehicle, provided that the validity of the security interest shall not be affected by issuance of a salvage certificate of title. The lienholder or security interest holder shall, within ten days after receipt of such notice of total loss claim and cancellation of the original certificate of title, mail or deliver the canceled original certificate of title to the commissioner; or

(iv) For the sole purpose of payment of a total loss claim, for any vehicle ten years of age or older for which neither the vehicle owner nor the lienholder or security interest holder, if any, possesses a certificate of title, the vehicle owner shall deliver the vehicle license plate and certificate of registration for such vehicle to the insurance company prior to payment of any claim and the insurance company shall mail or deliver the license plate and certificate of registration to the commissioner with a completed form provided by the commissioner; provided, however, that the vehicle owner shall not operate such vehicle and the owner shall obtain a certificate of title for such vehicle as provided by law, which certificate of title shall then be subject to cancellation as provided in this paragraph.



(D) The department shall give priority to the title submissions provided for in subparagraph (C) of this paragraph and shall issue a salvage certificate of title for such vehicles within seven days of receipt of such submissions by an insurance company.

(a.1) In the case of a motor vehicle which is subject to more than one perfected security interest or lien which motor vehicle is a total loss, if the insurer is to acquire title to the damaged motor vehicle, the holder of the senior security interest or lien, upon receipt of the settlement proceeds of the insurance policy in accordance with Code Section 33-34-9, shall apply for a new certificate of title for a transferee other than by voluntary transfer in accordance with subsection (b) of Code Section 40-3-35, naming the insurer only as transferee.

(b) Except as provided in subsection (a) of this Code section, any person, firm, or corporation which purchases or otherwise acquires a salvage motor vehicle shall apply to the commissioner for a salvage certificate of title for such motor vehicle within 30 days of the purchase or acquisition of the motor vehicle or within 30 days of the payment of a total loss claim as provided in paragraph (4) of subsection (a) of this Code section to the registered owner of the salvage motor vehicle, if the person, firm, or corporation intends to operate or to sell, convey, or transfer the motor vehicle; and no such person, firm, or corporation shall sell, transfer, or convey a salvage motor vehicle until such person, firm, or corporation has applied for and obtained a salvage certificate of title.

(c) The application for a salvage certificate of title shall be made in a manner to be prescribed by the commissioner.

(d) Any certificate of title which is issued to a salvage motor vehicle, as provided for in this Code section, shall contain the word “salvage” on the face of the certificate in such a manner as the commissioner may prescribe, so as to indicate clearly that the motor vehicle described is a salvage motor vehicle. The legend “rebuilt” in no larger than 12 point font shall be placed on a certificate of title to a vehicle which was declared a salvage vehicle and subsequently repaired with less than two major component parts to restore the vehicle to an operable condition.

(e) Notwithstanding this subsection and subsections (c) and (d) of Code Section 40-3-37, the legend “rebuilt” shall only be required to be placed on the certificate of title to a vehicle which was declared a salvage vehicle on or after July 1, 2004, and which was subsequently rebuilt.

(f) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant to this Code section, may issue

an administrative fine not to exceed \$1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated under this Code section. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto.

(g) The Commissioner of Insurance is authorized to enforce the provisions of this Code section to the extent such provisions are applicable to insurers which are under the jurisdiction of the Insurance Department. The Commissioner of Insurance is also authorized to cooperate with the commissioner in enforcing this Code section and to provide the commissioner with any information acquired by the Commissioner of Insurance during any investigation or proceeding involving this Code section. Nothing in this subsection shall be construed to limit the powers and duties of the commissioner to enforce the provisions of this Code section as such provisions apply to insurers.

(h) It shall be unlawful for any person, firm, or corporation to violate the provisions of subsection (a), (b), or (c) of this Code section; and any person, firm, or corporation convicted of violating such provisions shall be guilty of a misdemeanor. Any owner of a salvage motor vehicle who transfers or attempts to transfer such vehicle without obtaining a salvage certificate of title for such vehicle shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed \$5,000.00. Any lienholder or security interest holder who, after notice by the commissioner of payment of a total loss claim and

cancellation of the title of a vehicle, fails or refuses to return the title to the commissioner or who surrenders the title to anyone other than the commissioner shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed \$5,000.00.

(i) The registered owner who retains possession of a salvage motor vehicle to whom a total loss claim has been paid shall promptly remove the license plate from such vehicle and return such plate to the commissioner for cancellation. An insurer which pays a total loss claim shall, on a form prescribed by the commissioner, notify the owner of the duty to remove and return such license plate for cancellation and of all inspection requirements for rebuilding or restoring such vehicle.

(j) As used in this Code section, the terms:

(1) "Scrap metal processor" shall have the same meaning as set forth in Code Section 43-43-1.

(2) "Secondary metals recycler" shall have the same meaning as set forth in Code Section 10-1-350.

(3) "Used motor vehicle parts dealer" shall have the same meaning as set forth in Code Section 43-47-2. (Ga. L. 1961, p. 68, § 20; Ga. L. 1965, p. 264, § 1; Ga. L. 1966, p. 139, § 1; Ga. L. 1970, p. 185, § 1; Ga. L. 1975, p. 1596, § 1; Ga. L. 1979, p. 1108, § 1; Ga. L. 1981, p. 644, §§ 2, 4; Code 1981, § 40-3-35; Ga. L. 1985, p. 1227, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 1657, § 5; Code 1981, § 40-3-36, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, §§ 6, 7; Ga. L. 1993, p. 1260, § 7; Ga. L. 1998, p. 1179, § 35; Ga. L. 2000, p. 951, § 4-7; Ga. L. 2002, p. 848, § 2; Ga. L. 2004, p. 452, § 2; Ga. L. 2007, p. 585, § 1/HB 171; Ga. L. 2007, p. 635, § 2/HB 183; Ga. L. 2007, p. 652, § 12/HB 518; Ga. L. 2011, p. 355, §§ .1, 21/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 96, § 1/HB 900; Ga. L. 2012, p. 112, §§ 1-3, 1-4/HB 872; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, inserted ", including a trailer," in paragraphs (a)(1) and (a)(2); inserted "or trailer" in paragraph (a)(2) and subparagraph (a)(2)(A); in paragraph (a)(2), in the first sentence, inserted "or trailer is at least 12 model years old and" near the middle, and substituted ", if the vehicle was used as a motor vehicle, or \$1,700.00 or less if the vehicle was used as a trailer" for "and is at least 12 model years old"; inserted ", where applicable" in subparagraph (a)(2)(B); and added ", or \$1,700.00 or less if the vehicle is a trailer" at the end of division (a)(2)(E)(i) and in subpara-

graph (a)(2)(I). The second 2012 amendment, effective July 1, 2012, deleted "and" at the end of subparagraph (a)(2)(I); added subparagraph (a)(2)(J); redesignated former subparagraph (a)(2)(J) as present subparagraph (a)(2)(K); inserted "secondary metals recycler," throughout paragraph (a)(3); substituted "a secondary metals recycler, used motor vehicle parts dealer," for "either a used motor vehicle parts dealer" in the ending undesignated paragraph of subparagraph (a)(3)(C); and added subsection (j). See editor's note for applicability.

**The 2013 amendment,** effective April 24, 2013, part of an Act to revise, modern-



ize, and correct the Code, revised punctuation in the first sentence of paragraph (a)(2).

**Editor's notes.** — Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.

Ga. L. 2012, p. 112, § 4-2/HB 872, effective July 1, 2012, amended Ga. L. 2011, p. 355, § 21/HB 269 to remove the funding contingency for the amendment to paragraph (a)(3).

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 238 (2012).

## ARTICLE 3

### SECURITY INTERESTS IN AND LIENS ON MOTOR VEHICLES

#### 40-3-53. Perfection and enforcement of liens generally.

##### JUDICIAL DECISIONS

**Reliance on filing of judgment on general execution docket.** — When a creditor fails to follow O.C.G.A. § 40-3-53 in perfecting a lien on a motor vehicle, relying instead on the filing of a judgment on the general execution docket and resulting judgment lien, the creditor's judgment lien does not attach to the subject vehicle and the vehicle is not encumbered by the lien. The reasoning of the court in a prior decision was not properly construed or extended as precedent for the implication that a judgment lien properly perfected under state law against a motor

vehicle was thereby immune from avoidance under 11 U.S.C. § 522(f) if the conditions of that provision were shown to be satisfied; in fact, once the lien was shown to have attached and been perfected, the analysis under § 522(f) concerned precisely the avoidance of such an otherwise valid and perfected lien to the extent it impaired an exemption to which a debtor was entitled. *First Fin. Servs. v. Tallant* (In re Tallant), No. G11-23362-REB, 2012 Bankr. LEXIS 2454 (Bankr. N.D. Ga. Apr. 4, 2012).

#### 40-3-56. Satisfaction of security interests and liens.

(a)(1) If any security interest or lien listed on a certificate of title is satisfied, the holder thereof shall, within ten days, execute a release in the form the commissioner prescribes and mail or deliver the release to the commissioner and the owner, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. For the purposes of the release of a security interest or lien the "holder" of the lien or security interest is the parent bank or other lending institution and any branch or office of the parent institution may execute such release.

(2) If the commissioner has entered into an agreement with such a security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such security interest or lien, at such time as the security interest or lien

is released, by secure electronic measures, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or, if there is no other security interest holder or lienholder, to the owner without payment of any fee provided by Code Section 40-3-38.

(b) The owner may then forward the certificate of title, the release, the properly executed title application, and title application fee to the commissioner or the commissioner's duly authorized county tag agent, and the commissioner or authorized county tag agent shall release the security interest or lien on the certificate or issue a new certificate and mail or deliver the certificate to the owner. If the satisfied security interest or lien is one reflected on the certificate of title but the certificate of title is in the custody of the first security interest holder or lienholder as provided by this chapter, the release may be handled as provided in Code Section 40-3-27, and Code Section 40-3-26 shall otherwise be complied with. In the event that the lienholder or security interest holder is no longer in business, an individual shall not be required to submit a release to secure a new certificate of title. The owner shall be required to present to the commissioner or authorized county tag agent certification from the appropriate regulatory agency that such lienholder or security interest holder is no longer in business.

(c) Except for liens and security interests listed on certificates of title for mobile homes, cranes, or vehicles which weigh more than 10,000 pounds gross vehicle weight, which shall be satisfied only in conformity with subsections (a) and (b) of this Code section, any lien or security interest for a vehicle which is 11 model years old or less shall be considered satisfied and release shall not be required after ten years from the date of issuance of a title on which such lien or security interest is listed. For a vehicle which is 12 model years old and greater, any lien or security interest shall be considered satisfied and a release shall not be required after four years from the date of issuance of a title on which such lien or security interest is listed. None of the provisions of this Code section shall preclude the perfection of a new lien or security agreement, or the perfection of an extension of a lien or security agreement beyond a period of ten years for a vehicle which is 11 model years old or less or beyond a period of more than four years for a vehicle which is 12 model years old or greater, by application for a new certificate of title on which such lien or security agreement is listed. In order to provide for the continuous perfection of a lien or security interest originally entered into for a period of more than ten years for a vehicle which is 11 model years old or less or more than four years for a vehicle which is 12 model years old and greater, other than a mobile home, crane, or vehicle which weighs more than 10,000 pounds gross vehicle weight, an application for a second title on which the lien or security interest is listed must be submitted to the commissioner or the

commissioner's duly authorized tag agent before ten years from the date of the original title on which such lien or security interest is listed. Otherwise the lien or security interest shall be perfected as of the date of receipt of the application by the commissioner or the commissioner's duly authorized county tag agent. (Ga. L. 1961, p. 68, § 25; Ga. L. 1962, p. 79, § 15; Ga. L. 1965, p. 304, § 8; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 9; Ga. L. 1993, p. 1260, § 10; Ga. L. 1997, p. 739, § 23; Ga. L. 2012, p. 112, § 1-5/HB 872.)

**The 2012 amendment**, effective July 1, 2012, in the first sentence of paragraph (a)(1), deleted "after demand" following "ten days" and inserted "commissioner and the"; and, in subsection (c), inserted "for a vehicle which is 11 model years old or less" in the middle of the first sentence, added the second sentence, inserted "for a vehicle which is 11 model years old or less or beyond a period of more than four years for a vehicle which is 12 model years old or greater" in the present third sentence, and inserted "which is 11 model years old

or less or more than four years for a vehicle which is 12 model years old and greater," in the present fourth sentence. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 238 (2012).

#### **40-3-90. (For effective date, see note.) Certain acts declared felonies.**

**Delayed effective date.** — Ga. L. 2011, p. 355, § 21/HB 269, as amended by Ga. L. 2012, p. 112, § 4-2/HB 872, provides that the 2011 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assembly. This Code section, as set out in the bound volume, does not reflect the amendment by the 2011 Act owing to the delayed effective date. Funds were not appropriated at the 2011, 2012, or 2013 session of the General Assembly. After the appropriation is made, paragraphs (5) through (7) will read as follows:

"(5) Alters or forges a notice of a transaction concerning a security interest or lien reflected on the certificate of title as provided by Code Section 40-3-27;

"(6) Knowingly falsifies any information on the statement required by paragraph (2) of subsection (a) of Code Section 40-3-36; or

"(7) Willfully violates any other provision of this chapter after having previously violated the same or any other provision of this chapter and having been convicted of that act in a court of competent jurisdiction

"shall be guilty of a felony."



## CHAPTER 5

## DRIVERS' LICENSES

## Article 1

## General Provisions

- Sec.  
40-5-2. Keeping of records of applications for licenses and information on licensees; furnishing of information.
- 40-5-5. Authority of Governor to execute binding reciprocal agreements regarding operation of motor vehicles; publication of terms of agreements; rules and regulations; exemption for certain foreign citizens.

## Article 2

## Issuance, Expiration, and Renewal of Licenses

- 40-5-21.1. (For effective date, see note.) Temporary licenses, permits, or special identification cards; foreign licenses or identification cards as evidence of legal presence in the United States; extensions.
- 40-5-22. Persons not to be licensed; minimum ages for licensees; school attendance requirements; driving training requirements.
- 40-5-25. Applications; fees; provisions for voluntary participation in various programs; education of young people.

## Sec.

- 40-5-27. Examination of applicants.
- 40-5-39. Endorsement on license of limousine chauffeur; requirements; term.

## Article 3

## Cancellation, Suspension, and Revocation of Licenses

- 40-5-57.1. Suspension of licenses of persons under age 21 for certain offenses; suspension of licenses of persons under age 18 for certain point accumulations; reinstatement of license following suspension.
- 40-5-63. Periods of suspension; conditions to return of license.
- 40-5-63.1. Clinical evaluation and substance abuse treatment programs for certain offenders.
- 40-5-64. Limited driving permits for certain offenders.

## Article 3A

## Suspension of License for Certain Drug Offenses

- 40-5-75. (For effective date, see note.) Suspension of licenses by operation of law.
- 40-5-76. Restoration or suspension of defendant's driver's license or issuance of limited driving permit.

## ARTICLE 1

## GENERAL PROVISIONS

**Cross references.** — Completion of program for operation of watercraft while under influence of alcohol, toxic vapors, or drugs, § 52-7-12.

### 40-5-2. Keeping of records of applications for licenses and information on licensees; furnishing of information.

(a) The department shall maintain records regarding the drivers' licenses and permits issued by the department under this chapter. The drivers' records maintained by the department shall include:

(1) A record of every application for a license received by it and suitable indexes containing:

(A) All applications granted; and

(B) The name of every licensee whose license has been canceled, suspended, or revoked by the department and after each such name shall note the reasons for such action;

(2) Drivers' records received from other jurisdictions. Upon receipt of such driver's record, it shall become a part of such driver's record in this state and shall have the same force and effect as though entered on the driver's record in this state in the original instance; and

(3) Records of all accident reports and abstracts of court records of convictions of any offense listed in subsection (a) of Code Section 40-5-20, subsection (a) of Code Section 40-5-54, Code Section 40-6-10, driving on a suspended license in violation of Code Section 40-5-121, administrative license suspension pursuant to Code Sections 40-5-67 through 40-5-67.2, Code Section 40-5-75, Chapter 9 of this title, the "Motor Vehicle Safety Responsibility Act," and Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," any felony offense under this title, any offense committed while operating a commercial motor vehicle, serious traffic offenses, or other offenses requiring the assessment of points on the driving record that are received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee or individual showing the convictions of such licensee or individual and the traffic accidents in which such licensee or individual has been involved shall be readily ascertainable and available for the consideration of the department upon any application for, or application for renewal of license and at other suitable times. For purposes of issuing a driver's operating record to the public as provided in this Code section, the period of calculation for compilation of such report shall be determined by the date of arrest.

(b) The records maintained by the department on individual drivers are exempt from any law of this state requiring that such records be open for public inspection; provided, however, that initial arrest reports, incident reports, and the records pertaining to investigations or prosecutions of criminal or unlawful activity shall be subject to disclosure pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72 and related provisions. Georgia Uniform Motor Vehicle Accident Reports shall be subject to disclosure pursuant to paragraph (5) of subsection (a) of Code Section 50-18-72. The department shall not make records or personal information available on any driver except as

otherwise provided in this Code section or as otherwise specifically required by 18 U.S.C. Section 2721.

(c)(1) The driver's record provided by the department shall include an enumeration of any accidents in which the individual was convicted of a moving traffic violation, such moving traffic violation convictions, and information pertaining to financial responsibility. The department shall furnish a driver's operating record or personal information from a driver's record under the following circumstances:

(A) With the written instructions and consent of the driver upon whom the operating record has been made and compiled; such instructions and consent shall be signed by the driver but shall not be required to be notarized;

(B)(i) Pursuant to a written request or a request made in accordance with a contract with the Georgia Technology Authority for immediate on-line electronic furnishing of information, for use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting involving the driver; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this division shall be limited to name, address, driver identification number, and medical or disability information. The person who makes a request for a driver's operating record shall identify himself or herself and shall have certified or affirmed that the information contained in the record will be used only for the purpose specified in the request. Further, the person making the request shall certify or affirm that he or she has on file an application for insurance or for the renewal or amendment thereof involving the driver or drivers; or

(ii) For the purpose of ascertaining necessary rating information by an insurance agent pursuant to an insurer's contract with the Georgia Technology Authority for the immediate on-line electronic furnishing of limited rating information to such insurer's agents. Limited rating information furnished under this division shall include only the number of violations of Code Section 40-6-391, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, and the number and type of other moving traffic violations which were committed by the proposed insured driver or drivers within the immediately preceding three or five years, which period shall be specified by the person making the request. The provisions of division (i) of this subparagraph notwithstanding, no other information concerning a driver's operating record shall be released to such agents for purposes of rating;



(B.1) The department shall implement a pilot program for 12 months to determine the revenue feasibility of supplying limited rating information to agents, insurers, and insurance support organizations. The department shall report the results of such pilot program to the Office of Planning and Budget. Unless the Office of Planning and Budget determines that the pilot program is not successful, the department shall continue the program on a year-to-year basis and furnish limited rating information to insurance support organizations for the same purposes as provided in division (ii) of subparagraph (B) of this paragraph, pursuant to a contract with the Georgia Technology Authority, provided that all other necessary requirements of this subsection have been met;

(C) In accordance with Article 7 of this chapter, the “Georgia Uniform Commercial Driver’s License Act”;

(D) To a judge, prosecuting official, or law enforcement agency for use in investigations or prosecutions of alleged criminal or unlawful activity, or to the driver’s licensing agency of another state;

(E) Pursuant to a request from a public or private school system concerning any person currently employed or an applicant for employment as a school bus driver who agrees in writing to allow the department to release the information;

(F) With the written release of the driver, to a rental car company for use in the normal course of its business; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subparagraph shall be limited to name, address, driver identification number, and medical or disability information. Such access shall be provided and funded through the GeorgiaNet Division of the Georgia Technology Authority, and the department shall bear no costs associated with such access; and

(G) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information fur-

nished under this subparagraph shall be limited to name, address, and driver identification number and shall not include photographs, fingerprints, computer images, or medical or disability information. The personal information obtained by a business under this subparagraph shall not be resold or redisclosed for any other purpose without the written consent of the individual. Furnishing of information to a business under this subparagraph shall be pursuant to a contract entered into by such business and the state which specifies, without limitation, the consideration to be paid by such business to the state for such information and the frequency of updates.

(2) Nothing in this Code section shall preclude the department from confirming or verifying the status of a driver's license or permit.

(d)(1) The commissioner shall designate members of the department to be the official custodians of the records of the department. No disclosure or release of operating records or personal information shall be made without the signed written approval of a designated custodian; except that such approval shall not be required for any release or disclosure through the GeorgiaNet Division of the Georgia Technology Authority pursuant to the signed written consent of the driver, provided that any such signed written consent shall be retained for a period of not less than four years by the party requesting the information; and except that such approval shall not be required for any release or disclosure of information made electronically through the GeorgiaNet Division of the Georgia Technology Authority in accordance with a contract authorized by subparagraph (c)(1)(B) of this Code section. The custodians may certify copies or compilations, including extracts thereof, of the records of the department.

(2) In response to a subpoena or upon the request of any judicial official, the department shall provide a duly authenticated copy of any record or other document. This authenticated copy may consist of a photocopy or computer printout of the requested document certified by the commissioner or the commissioner's duly authorized representative.

(e) Upon written request, the department may provide copies of any record or personal information from any driver's record for use by any appropriate governmental official, entity, or agency for the purposes of carrying out official governmental functions or legitimate governmental duties; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subsection shall be limited to name, address, driver identification number, and medical or disability information.

(f) The department is specifically authorized to disseminate the following records and information:

(1) To the United States Selective Service System and the Georgia Crime Information Center, compilations of the names, most current addresses, license or identification card numbers, and dates of birth of licensees or applicants for licenses or applicants for or holders of identification cards issued under this chapter, or, in the case of the United States Selective Service System, any other information from the license or identification card application as necessary for purposes of registration of persons therewith. Such information shall only be used in the fulfillment of the legitimate governmental duties of the United States Selective Service System and the Georgia Crime Information Center and shall not be further disseminated to any person. Information transmitted to the United States Selective Service System pursuant to this paragraph shall be provided in an electronic format;

(2) To the military branches of the United States Department of Defense, compilations of the names, dates of birth, sex, and most current addresses of licensees between the ages of 16 and 24 for the sole purpose of mailing recruiting and job opportunity information, provided that the department shall not be required to provide such a compilation more than once every two months;

(3) To the Department of Human Services, compilations of the names, dates of birth, and most current addresses of licensees or applicants for licenses. Any information provided pursuant to this subsection shall only be used by the Department of Human Services in connection with the recovery of delinquent child support payments under Article 1 of Chapter 11 of Title 19, known as the "Child Support Recovery Act";

(4) To a local fire or law enforcement department, a copy of the abstract of the driving record of any applicant for employment or any current employee and to the Georgia Bureau of Investigation for the purpose of providing a local fire or law enforcement department with the abstract through the Criminal Justice Information System. It shall be unlawful for any person who receives an abstract of the driving record of an individual under this subsection to disclose any information pertaining to such abstract or to make any use thereof except in the performance of official duties with the local fire or law enforcement department;

(5) The information required to be made available to organ procurement organizations pursuant to subsection (d) of Code Section 40-5-25 and for the purposes set forth in such Code section;

(6)(A) The information required to be made available regarding voter registration pursuant to Code Sections 21-2-221 and 21-2-221.2 and for the purposes set forth in such Code sections; and



(B) Information sufficient for use in verifying a registered voter's identity or the identity of an applicant for voter registration by the Secretary of State, the county election superintendent, or the county registrar, including name, address, date of birth, gender, driver identification number, photograph, and signature;

(7) The lists required to be made available to boards of jury commissioners, the Council of Superior Court Clerks of Georgia, and the Administrative Office of the Courts pursuant to Code Section 15-12-40 or 15-12-40.1 regarding county residents who are the holders of drivers' licenses or personal identification cards issued pursuant to this chapter. Such lists shall identify each such person by name, address, date of birth, and gender, and, whenever racial and ethnic information is collected by the department for purposes of voter registration pursuant to Code Section 21-2-221, the department shall also provide such information. The department shall also provide the address, effective date, document issue date, and document expiration date and shall indicate whether the document is a driver's license or a personal identification card. Such information shall be provided to the Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts upon request in the electronic format required by the council for such purposes and without any charge for such data; and

(8) To the Department of Revenue, information sufficient for use in the detection and prevention of fraudulent tax returns, including name, address, date of birth, gender, driver identification number, photograph, and signature. Such information may be provided in electronic format by means of bulk transfer. Any information provided pursuant to this paragraph shall only be used by the Department of Revenue in connection with the detection and prevention of fraudulent tax returns.

(g) The drivers' records and personal information disseminated by the department pursuant to this Code section may be used only by the authorized recipient and only for the authorized purpose. It shall be unlawful to disclose, distribute, or sell such records or information to an unauthorized recipient or for an unauthorized purpose. It shall be a violation of this Code section to make a misrepresentation or false statement in order to obtain access to or information from the department's records. Any person who knowingly and willfully violates the provisions of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished as provided in Code Section 17-10-4.

(h) The department shall maintain for four years a record of each release of a driver's operating record or personal information, including the name and address of the requesting party, the date of the release,

and the provision of law authorizing the release. Such record of releases shall be reported to the affected driver upon written application by the driver, except that the department shall not report any information about the existence of a release made in connection with a criminal investigation which is ongoing and which involves, though not necessarily focuses upon, such driver. Upon receipt of an application from a driver for such record of releases, the department shall have three business days to determine whether an ongoing criminal investigation is involved, and such determination shall be in the discretion of the commissioner. Where a release is not reported to a driver because the underlying release involved an ongoing criminal investigation, the records concerning the underlying release shall be maintained for four years after the criminal investigation is closed and such records shall during such period after closure of the investigation be subject to disclosure upon application by the driver.

(i) The provisions of this Code section shall apply, where relevant, to the maintenance and disclosure of the department's records regarding state identification cards issued under Article 5 of this chapter.

(j) The commissioner is authorized to promulgate any rules, regulations, or policies as are necessary to carry out the provisions of this Code section, including the promulgation of regulations limiting the retention of conviction and withdrawal information on a driving record. Notwithstanding the foregoing, any regulation relating to the retention of conviction and withdrawal information on a driving record shall apply the same retention schedule to both commercial and noncommercial drivers. In accordance with paragraph (6) of subsection (a) of Code Section 50-25-4, reasonable fees shall be assessed for furnishing information from records or data bases pursuant to provisions of this Code section; provided, however, that the fee for furnishing an abstract of a driver's record shall not exceed \$10.00.

(k)(1) The department, pursuant to rules and regulations promulgated by the commissioner, may periodically review all records maintained pursuant to this Code section and shall correct those records which contain known improper, false, fraudulent, or invalid information.

(2) Not later than July 31, 2006, the department shall destroy all records of fingerprints obtained on and after April 15, 1996, and prior to July 1, 2006, from applicants for drivers' licenses, identification cards, and identification cards for persons with disabilities issued by the department and shall compile and make available for public inspection a list of all persons or entities to whom the department provided such fingerprint records. Notwithstanding the provisions of this paragraph, fingerprint images electronically stored on existing drivers' licenses will be destroyed upon application for a renewal of the driver's license.

(l) In any case in which the release or transmittal of one or more driver's records is authorized under this Code section or any other provision of law, the commissioner may determine the method of release or transmittal of the record or records, including without limitation release or transmittal by mail or by means of the Internet or other electronic means. (Ga. L. 1937, p. 322, art. 4, § 13; Ga. L. 1939, p. 135, § 12; Code 1933, § 68B-215, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1978, p. 920, § 1; Ga. L. 1979, p. 142, § 1; Ga. L. 1980, p. 917, §§ 1, 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1182, § 1; Ga. L. 1985, p. 1339, § 1; Ga. L. 1986, p. 156, § 1; Ga. L. 1986, p. 514, § 1; Ga. L. 1988, p. 470, § 1; Ga. L. 1988, p. 687, § 1; Ga. L. 1989, p. 519, § 3; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1870, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1995, p. 917, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1061, § 1; Ga. L. 1996, p. 1624, § 5; Ga. L. 1997, p. 1446, § 2; Ga. L. 1999, p. 809, § 3; Ga. L. 2000, p. 249, § 2; Ga. L. 2000, p. 429, § 3; Ga. L. 2000, p. 951, § 5-2; Ga. L. 2001, p. 294, § 2; Ga. L. 2001, Ex. Sess., p. 318, § 1-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 749, § 2; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-2/HB 501; Ga. L. 2005, p. 465, § 1/HB 151; Ga. L. 2005, p. 1122, § 1/HB 577; Ga. L. 2006, p. 432, §§ 1, 2/HB 513; Ga. L. 2006, p. 449, § 1/HB 1253; Ga. L. 2006, p. 897, § 2/HB 1417; Ga. L. 2008, p. 171, § 1/HB 1111; Ga. L. 2008, p. 1137, § 1/SB 350; Ga. L. 2009, p. 327, § 2/HB 549; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 932, § 1.1/HB 396; Ga. L. 2011, p. 59, § 1-66/HB 415; Ga. L. 2011, p. 99, § 57/HB 24; Ga. L. 2012, p. 218, § 11/HB 397; Ga. L. 2012, p. 804, § 4/HB 985; Ga. L. 2012, p. 995, § 44/SB 92.)

**The 2012 amendments.** — The first 2012 amendment, effective April 17, 2012, substituted “paragraph (5)” for “paragraph (4.1)” in the second sentence of subsection (b). The second 2012 amendment, effective May 2, 2012, substituted “Code Sections 21-2-221 and 21-2-221.2” for “Code Section 21-2-221” in subparagraph (f)(6)(A); and inserted “or the identity of an applicant for voter registration” near the beginning of subparagraph (f)(6)(B). The third 2012 amendment, ef-

fective July 1, 2012, deleted “and” from the end of subparagraph (f)(6)(B); substituted “; and” for a period at the end of paragraph (f)(7); and added paragraph (f)(8).

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011). For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 139 (2012).

#### **40-5-5. Authority of Governor to execute binding reciprocal agreements regarding operation of motor vehicles; publication of terms of agreements; rules and regulations; exemption for certain foreign citizens.**

(a) The Governor is authorized and directed to negotiate and consummate, with the proper authorities of the several states of the United States, the District of Columbia, and the territories and possessions of



the United States, valid and binding reciprocal agreements whereby residents of such states, the District of Columbia, and the territories and possessions of the United States operating motor vehicles properly licensed and registered in their respective jurisdictions may have the same or substantially the same privileges or exemptions in the operation of their motor vehicles in this state as residents of this state may have and enjoy in the operation in such other jurisdictions of their motor vehicles properly licensed and registered in this state. Notwithstanding any provision of law to the contrary, the Governor may likewise negotiate and consummate valid and binding reciprocal agreements with the proper authorities of said jurisdictions relating to the suspension, revocation, cancellation, and reinstatement of motor vehicle drivers' licenses. In the making of such agreements, due regard shall be had for the benefit and convenience of the motor vehicle owners and other citizens of this state. The Governor may adopt and promulgate such rules and regulations as shall be necessary to effectuate and administer the provisions of this Code section.

(b) The Governor or a commission appointed by him shall give proper publicity to the terms of every reciprocal agreement entered into by him pursuant to this chapter; and he is authorized and empowered to promulgate rules and regulations for observance and enforcement of the terms of such agreement, which rules and regulations shall have the force and effect of law.

(c) The commissioner is authorized to negotiate and enter into an agreement with a foreign country that exempts the citizens of such foreign country from the knowledge test and the on-the-road driving test required in Code Section 40-5-27 so long as the citizen holds a valid driver's license of an equivalent class issued by such foreign country; provided, however, that no such agreement shall be entered into unless the foreign country offers the same reciprocity to persons holding a valid driver's license of an equivalent class issued by the State of Georgia and the commissioner determines that the laws of such foreign country relating to the operation of motor vehicles are sufficiently similar to such laws of this state such that driving safety shall not be compromised; and provided, further, that no such agreement shall be entered into unless the Department of Economic Development has certified that persons or entities from such country have made or are likely to make a substantial economic investment in this state that has or will lead to the substantial creation of jobs in this state. The provisions of this subsection notwithstanding, the department shall not be authorized to enter into any reciprocal agreement with any foreign country that is designated as a state sponsor of terrorism by the United States Department of State. The exemption provided for in this subsection shall not be an exemption from any other legal requirement for the issuance of a driver's license, including the requirement that the

applicant demonstrate lawful presence within the United States in accordance with Code Sections 40-5-21.1 and 40-5-21.2. This subsection shall not apply to citizens of foreign countries applying for a commercial driver's license or Class M driver's license.

(d) The department shall make a notation on any driver's license, permit, identification card, or other state identifying document issued by the department pursuant to this Code section. The notation shall be in a manner approved by the department and shall state "Limited Term" or such other notation as determined by the department. Nothing contained in this subsection shall preclude the department from making the same or similar notations on other similarly issued identifying documents. Any driver's license or other identifying document that is so noted shall not be used as voter identification. (Ga. L. 1937-38, Ex. Sess., p. 617, §§ 1, 5; Ga. L. 1941, p. 361, §§ 2, 5; Ga. L. 1959, p. 25, § 1; Ga. L. 1973, p. 559, § 1; Ga. L. 1976, p. 198, § 1; Ga. L. 1979, p. 1015, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 2013, p. 281, § 1/HB 475.)

**The 2013 amendment**, effective July 1, 2013, added subsections (c) and (d).

## ARTICLE 2

### ISSUANCE, EXPIRATION, AND RENEWAL OF LICENSES

#### **40-5-20. License required; surrender of prior licenses; local licenses prohibited.**

#### JUDICIAL DECISIONS

**Mexican driver had no standing to challenge statute as unconstitutional.** — Driver with a Mexican driver's license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic because the Mexican did not have an international license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. *Medina v. State*, 312 Ga. App. 399, 718 S.E.2d 323 (2011).

**Safe harbor provision not applicable to driver with learner's permit.** — Because the defendant's learner's permit was not valid for the purpose of driving unsupervised, as the defendant was on the day of a traffic stop, the defendant could not qualify for the safe harbor under O.C.G.A. § 40-5-20(a). *Colotl v. State*, 313 Ga. App. 42, 720 S.E.2d 210 (2011).

**Cited in** *Manhertz v. State*, 317 Ga. App. 856, 734 S.E.2d 406 (2012).

**40-5-21. Exemptions generally.****JUDICIAL DECISIONS**

**Mexican driver had no standing to challenge driver's license requirement.** — Driver with a Mexican driver's license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic be-

cause the Mexican did not have an international license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. *Medina v. State*, 312 Ga. App. 399, 718 S.E.2d 323 (2011).

**40-5-21.1. (For effective date, see note.) Temporary licenses, permits, or special identification cards; foreign licenses or identification cards as evidence of legal presence in the United States; extensions.**

(a) Notwithstanding any other provision of this title, an applicant who presents in person valid documentary evidence of:

(1) Admission to the United States in a valid, unexpired nonimmigrant status;

(2) A pending or approved application for asylum in the United States;

(3) Admission into the United States in refugee status;

(4) An approved application for temporary protected status in the United States;

(5) Approved deferred action status;

(6) Other federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law; or

(7) Verification of lawful presence as provided by Code Section 40-5-21.2

may be issued a temporary license, permit, or special identification card. Such temporary license, permit, or special identification card shall be valid only during the period of time of the applicant's authorized stay in the United States or five years, whichever occurs first.

(b) A driver's license or identification card issued by any state or territory which, on or after July 1, 2006, authorized such driver's license or identification card to be issued to persons not lawfully present in the United States may not be accepted as evidence of legal presence in the United States.



(c) (For effective date, see note.) Any noncitizen applicant whose Georgia driver's license or identification card has expired, or will expire within 30 days, who has filed, or on whose behalf has been filed, a request for an extension with the United States Department of Homeland Security, or similar such federal issuing agency, for time to remain lawfully within the United States shall be issued a temporary driving permit or identification card valid for 120 days from the date of the expiration of his or her valid driver's license or identification card. The noncitizen applicant shall be required to present evidence of the application for extension by submitting a copy or copies of documentation designated by the department. A temporary driving permit or identification card shall be issued upon submission of the required documentation and an application fee in an amount to be determined by the department. Upon the expiration of the temporary driving permit or identification card, no further consecutive temporary permits or identification cards shall be authorized; provided, however, application may be made following the expiration of an additional valid Georgia driver's license or identification card. (Code 1981, § 40-5-21.1, enacted by Ga. L. 2005, p. 1122, § 2/HB 577; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 1154, § 3/SB 488; Ga. L. 2010, p. 932, § 2/HB 396; Ga. L. 2013, p. 283, § 1/SB 122.)

**Delayed effective date.** — Subsection (c), as set out above, becomes effective January 1, 2014. Until January 1, 2014, there is no subsection (c).

**The 2013 amendment,** effective January 1, 2014, added subsection (c).

#### **40-5-22. Persons not to be licensed; minimum ages for licensees; school attendance requirements; driving training requirements.**

(a) Except as otherwise provided in this Code section, the department shall not issue any Class C driver's license to any person who is under 18 years of age or Class M driver's license to any person who is under the age of 17 years, except that the department may, under subsection (a) of Code Section 40-5-24, issue a Class P instruction permit permitting the operation of a noncommercial Class C vehicle to any person who is at least 15 years of age, and may, under subsection (b) of Code Section 40-5-24, issue a Class D driver's license permitting the operation of a noncommercial Class C vehicle to any person who is at least 17 years of age. On and after January 1, 1985, the department shall not issue any driver's license to any person under 18 years of age unless such person presents a certificate or other evidence acceptable to the department which indicates satisfactory completion of an alcohol and drug course as prescribed in subsection (b) of Code Section 20-2-142; provided, however, that a person under 18 years of age who becomes a resident of this state and who has in his or her immediate

possession a valid license issued to him or her in another state or country shall not be required to take or complete the alcohol and drug course. The department shall not issue a driver's license or a Class P instruction permit for the operation of a Class A or B vehicle or any commercial driver's license to any person who is under the age of 18 years.

(a.1)(1) The department shall not issue an instruction permit or driver's license to a person who is younger than 18 years of age unless at the time such minor submits an application for an instruction permit or driver's license the applicant presents acceptable proof that he or she has received a high school diploma, a general educational development (GED) diploma, a special diploma, or a certificate of high school completion or has terminated his or her secondary education and is enrolled in a postsecondary school, is pursuing a general educational development (GED) diploma, or the records of the department indicate that said applicant:

(A) Is enrolled in and not under expulsion from a public or private school and has satisfied relevant attendance requirements as set forth in paragraph (2) of this subsection for a period of one academic year prior to application for an instruction permit or driver's license; or

(B) Is enrolled in a home education program that satisfies the reporting requirements of all state laws governing such program.

The department shall notify such minor of his or her ineligibility for an instruction permit or driver's license at the time of such application.

(2) The department shall forthwith notify by certified mail or statutory overnight delivery, return receipt requested, any minor issued an instruction permit or driver's license in accordance with this subsection other than a minor who has terminated his or her secondary education and is enrolled in a postsecondary school or who is pursuing a general educational development (GED) diploma that such minor's instruction permit or driver's license is suspended subject to review as provided for in this subsection if the department receives notice that indicates that such minor:

(A) Has dropped out of school without graduating and has remained out of school for ten consecutive school days;

(B) Has ten or more school days of unexcused absences in the current academic year or ten or more school days of unexcused absences in the previous academic year; or

(C) Has been found in violation by a hearing officer, panel, or tribunal of one of the following offenses, has received a change in

placement for committing one of the following offenses, or has waived his or her right to a hearing and pleaded guilty to one of the following offenses:

- (i) Threatening, striking, or causing bodily harm to a teacher or other school personnel;
- (ii) Possession or sale of drugs or alcohol on school property or at a school sponsored event;
- (iii) Possession or use of a weapon on school property or at a school sponsored event. For purposes of this division, the term "weapon" shall have the same meaning as in Code Section 16-11-127.1 but shall not include any part of an archeological or cultural exhibit brought to school in connection with a school project;
- (iv) Any sexual offense prohibited under Chapter 6 of Title 16;  
or
- (v) Causing substantial physical or visible bodily harm to or seriously disfiguring another person, including another student.

Notice given by certified mail or statutory overnight delivery with return receipt requested mailed to the person's last known address shall be prima-facie evidence that such person received the required notice. Such notice shall include instructions to the minor to return immediately the instruction permit or driver's license to the department and information summarizing the minor's right to request an exemption from the provisions of this subsection. The minor so notified may request in writing a hearing within ten business days from the date of receipt of notice. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." After such hearing, the department shall sustain its order of suspension or rescind such order. The department shall be authorized to grant an exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor. Appeal from such hearing shall be in accordance with said chapter. If no hearing is requested within the ten business days specified above, the right to a hearing shall have been waived and the instruction permit or driver's license of the minor shall remain suspended. The suspension provided for in this paragraph shall be for a period of one year or shall end upon the date of such minor's eighteenth birthday or, if the



suspension was imposed pursuant to subparagraph (A) of this paragraph, upon receipt of satisfactory proof that the minor is pursuing or has received a general educational development (GED) diploma, a high school diploma, a special diploma, a certificate of high school completion, or has terminated his or her secondary education and is enrolled in a postsecondary school, whichever comes first.

(3) The State Board of Education and the commissioner of driver services are authorized to promulgate rules and regulations to implement the provisions of this subsection.

(4) The Technical College System of Georgia shall be responsible for compliance and noncompliance data for students pursuing a general educational development (GED) diploma.

(a.2)(1) On and after January 1, 2002, the department shall not issue any initial Class D driver's license or, in the case of a person who has never been issued a Class D driver's license by the department or the equivalent thereof by any other jurisdiction, any initial Class C driver's license unless such person:

(A) Is at least 16 years of age and has completed an approved driver education course in a licensed private or public driver training school and in addition has a cumulative total of at least 40 hours of other supervised driving experience including at least six hours at night, all of which is verified in writing signed before a person authorized to administer oaths by a parent or guardian of the applicant or by the applicant if such person is at least 18 years of age; or

(B) Is at least 17 years of age and has completed a cumulative total of at least 40 hours of supervised driving experience including at least six hours at night, and the same is verified in writing signed before a person authorized to administer oaths by a parent or guardian of the applicant or by the applicant if such person is at least 18 years of age; provided, however, that a person 17 years of age or older who becomes a resident of this state, who meets all of the qualifications for issuance of a Class C license with the exception of the completion of an approved driver education training course and at least 40 hours of supervised driving experience as required by this subsection, and who has in his or her immediate possession a valid license equivalent to a Class C license issued to him or her in another state or country shall be entitled to receive a Class C license.

(2) The commissioner shall by rule or regulation establish standards for approval of any driver education course for purposes of subparagraph (A) of paragraph (1) of this subsection, provided that such course shall be designed to educate young drivers about safe

driving practices and the traffic laws of this state and to train young drivers in the safe operation of motor vehicles, and provided, further, that the commissioner shall provide for the approval of courses from other states to satisfy the requirements of this paragraph for any child moving into this state within nine months of his or her sixteenth birthday when the child's parent is in the active military service of the United States.

(3) For purposes of supervised driving experience under paragraph (1) of this subsection, supervision shall be provided by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(4) For the purposes of this Code section, the term "approved driver education training course" shall include those driver education training courses approved by the Department of Driver Services.

(5) For purposes of this Code section, the term "approved driver education training course" shall include instruction given in the course of a home education program that satisfies the reporting requirements of all state laws governing such programs, provided that such instruction utilizes a curriculum approved by the department.

(b)(1) Notwithstanding the provisions of subsection (a) of this Code section, any person 14 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to visual impairment may apply for and, subject to the approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this subsection shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver. The department shall require satisfactory proof that the physically impaired parent or guardian previously held a valid driver's license in the State of Georgia, another state, or the District of Columbia before issuing an instructional permit pursuant to this paragraph.

(2) Notwithstanding the provisions of subsection (a) of this Code section, any person 15 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to physical impairment and has been issued an identification card containing the international handicapped symbol pursuant to Article 8 of this chapter may apply for and, subject to the

approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this paragraph shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver. The department shall require satisfactory proof that the physically impaired parent or guardian previously held a valid driver's license in the State of Georgia, another state, or the District of Columbia before issuing an instructional permit pursuant to this paragraph.

(c) The department shall not issue any driver's license to nor renew the driver's license of any person:

(1) Whose license has been suspended during such suspension, or whose license has been revoked, except as otherwise provided in this chapter;

(2) Whose license is currently under suspension or revocation in any other jurisdiction upon grounds which would authorize the suspension or revocation of a license under this chapter;

(3) Who is a habitual user of alcohol or any drug to a degree rendering him or her incapable of safely driving a motor vehicle;

(4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(5) Who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(6) Who the commissioner has good cause to believe would not, by reason of physical or mental disability, be able to operate a motor vehicle with safety upon the highway; or

(7) Whose license issued by any other jurisdiction is suspended or revoked by such other jurisdiction during the period such license is suspended or revoked by such other jurisdiction. (Ga. L. 1937, p. 322, art. 4, § 2; Ga. L. 1966, p. 12, § 1; Code 1933, § 68B-203, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 745, § 2; Ga. L. 1984, p. 22, § 40; Ga. L. 1986, p. 839, § 1; Ga. L. 1989, p. 519, § 6; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 321, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 760, § 10; Ga. L. 2000, p. 951, § 5-5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, § 1-1; Ga. L. 2004, p. 107, § 21B; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-4/HB 501; Ga. L. 2005, p. 798, § 22/SB 35; Ga. L. 2005, p. 1461, § 3/SB 226; Ga. L.



2006, p. 72, § 40/SB 465; Ga. L. 2006, p. 343, § 3/SB 637; Ga. L. 2006, p. 449, § 2/HB 1253; Ga. L. 2008, p. 171, § 2/HB 1111; Ga. L. 2008, p. 335, § 6/SB 435; Ga. L. 2008, p. 589, § 1/HB 969; Ga. L. 2010, p. 199, § 1/HB 258; Ga. L. 2011, p. 355, § 2/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 72, § 2/SB 236.)

**The 2012 amendment**, effective January 1, 2013, inserted “, and provided, further, that the commissioner shall provide for the approval of courses from other states to satisfy the requirements of this paragraph for any child moving into this

state within nine months of his or her sixteenth birthday when the child’s parent is in the active military service of the United States” at the end of paragraph (a.2)(2).

**40-5-25. Applications; fees; provisions for voluntary participation in various programs; education of young people.**

(a) Every application for an instruction permit or for a driver’s license shall be made upon a form furnished by the department. Every application shall be accompanied by the proper license fee. The fees shall be as established by the Board of Driver Services, not to exceed:

(1) For instruction permits for Classes C, E, F, and M drivers’ licenses and for Class D drivers’ licenses	\$ 10.00
(2) For five-year Classes C, E, F, and M noncommercial drivers’ licenses .....	20.00
(2.1) For eight-year Classes C, E, F, and M noncommercial drivers’ licenses .....	32.00
(3) For Classes A, B, C, and M commercial drivers’ licenses .....	20.00
(4) For application for Classes A, B, C, and M commercial drivers’ licenses or a Class P commercial driver’s instruction permit .....	35.00
(5) For Class P commercial drivers’ instruction permits for Classes A, B, C, and M commercial drivers’ licenses .....	10.00
(6) For Classes A, B, C, and M commercial drivers’ licenses, initial issuance requiring a road test ...	70.00
(7) For Classes A, B, C, and M commercial drivers’ licenses, initial issuance not requiring a road test	20.00
(8) For renewal of Classes A, B, C, and M commercial drivers’ licenses .....	20.00
(8.1) For renewal of five-year Classes C, E, F, and M noncommercial drivers’ licenses .....	20.00

(8.2) For renewal of eight-year Classes C, E, F, and M noncommercial drivers' licenses .....	32.00
(9) Initial issuance of Classes A, B, C, and M commercial drivers' licenses and Class P commercial drivers' instruction permits shall include all endorsement fees within the license fee. Each endorsement added after initial licensing .....	5.00

The commissioner may by rule provide incentive discounts in otherwise applicable fees reflecting cost savings to the department where a license is renewed by means other than personal appearance. The discount for renewal of a Class C or Class M license and any other discounts shall be as determined by the commissioner. Except as provided in Code Section 40-5-36, relating to veterans' licenses, and Code Section 40-5-149, relating to application fees for public school bus drivers, there shall be no exceptions to the fee requirements for a commercial driver's license or a commercial driver's license permit. Notwithstanding any other provision of this Code section, there shall be no fee whatsoever for replacement of any driver's license solely due to a change of the licensee's name or address, provided that such replacement license shall be valid only for the remaining period of such original license; and provided, further, that only one such free replacement license may be obtained within the period for which the license was originally issued. Any application for the replacement of a lost license pursuant to Code Section 40-5-31 or due to a change in the licensee's name or address submitted within 150 days of the expiration of said license shall be treated as an application for renewal subject to the applicable license fees as set forth in this subsection. The maximum period for which any driver's license shall be issued is eight years.

(b)(1) Each person applying for a Class P commercial or noncommercial instruction permit for a Class A, B, C, E, F, or M driver's license shall pay the applicable license fee prior to attempting the knowledge test for the instruction permit sought. If said person fails to achieve a passing score on the knowledge test, the license fee paid shall be considered a testing fee and retained by the department. Any person failing to achieve a passing score on the knowledge test for an instructional permit shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her license fee.

(2) Each person applying for a Class A, B, or C commercial driver's license shall pay the applicable license fee at the time that he or she schedules his or her appointment for said skills test. If said person fails to appear for his or her scheduled skills test appointment or fails to achieve a passing score on the skills test, the license fee paid shall be considered a testing fee and retained by the department. The

person shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her license fee. All fees retained by the department pursuant to this Code section shall be remitted to the general fund.

(c) Every such application shall state the full legal name, date of birth, sex, and residence address of the applicant; shall briefly describe the applicant; shall state whether the applicant has theretofore been licensed as a driver and, if so, when and by what state or country, and whether any such license has ever been suspended, revoked, or refused, and, if so, the date of and reason for such suspension, revocation, or refusal; and shall state such other information as the commissioner may require to determine the applicant's identity, competence, and eligibility. The application shall include any other information as required by paragraph (1) of subsection (a.1) of Code Section 19-11-9.1. The department shall not issue a license until a complete examination of the applicant's record has been completed. The commissioner may issue such rules and regulations as shall be necessary for the orderly processing of license applications.

(d)(1) The General Assembly finds that it is in the best interest of the state to encourage improved public education and awareness regarding anatomical gifts of human organs and tissues and to address the ever increasing need for donations of anatomical gifts for the benefit of the citizens of Georgia.

(2) The department shall make available to those federally designated organ procurement organizations the name, license number, date of birth, and most recent address of any person who obtains an organ donor driver's license. Information so obtained by such organizations shall be used for the purpose of establishing a state-wide organ donor registry accessible to organ tissue and eye banks authorized to function as such in this state and shall not be further disseminated.

(e)(1) The General Assembly finds that it is in the best interests of the state to encourage improved public education and awareness regarding blindness and to address the need for blindness prevention screenings and treatments for the benefit of the citizens of Georgia.

(2) Each application form for issuance, reissuance, or renewal of a driver's license under subsection (a) of this Code section shall include language permitting the applicant to make a voluntary contribution of \$1.00 to be used for purposes of preventing blindness and preserving the sight of residents of this state. Any such voluntary contribution shall be made at the discretion of the applicant at the time of application in addition to payment of the license fee required under this Code section.



(3) Voluntary contributions made pursuant to this subsection shall be transmitted to the Department of Public Health for use thereby in providing the blindness education, screening, and treatment program provided by Code Section 31-1-23.

(4) This subsection shall become effective on January 1, 2000.

(f) The General Assembly finds that it is in the best interests of this state to encourage alcohol and drug education to inform young people of the dangers involved in consuming alcohol or certain drugs while operating a motor vehicle. The General Assembly further finds that parental or guardian involvement in an alcohol and drug awareness program will assist in reducing the number of young persons involved in driving under the influence of drugs or alcohol. To promote these purposes, where a parent or guardian successfully participates in the parent-guardian component of the alcohol and drug course required by subsection (a) of Code Section 40-5-22 as prescribed in subsection (b) of Code Section 20-2-142, each parent or guardian shall be entitled to a one-time three-year online motor vehicle report. (Ga. L. 1937, p. 322, art. 4, § 5; Ga. L. 1943, p. 196, § 5; Ga. L. 1947, p. 294, § 1; Ga. L. 1951, p. 157, § 7; Ga. L. 1955, p. 662, § 1; Ga. L. 1955, Ex. Sess., p. 35, § 1; Ga. L. 1961, p. 136, § 2; Ga. L. 1961, p. 433, § 1; Ga. L. 1964, p. 171, § 1; Code 1933, § 68B-206, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 819, § 1; Ga. L. 1989, p. 519, § 9; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 18; Ga. L. 1993, p. 615, § 1; Ga. L. 1994, p. 1390, § 1; Ga. L. 1994, p. 1876, § 1; Ga. L. 1996, p. 228, § 1; Ga. L. 1997, p. 760, § 13; Ga. L. 1999, p. 537, § 2; Ga. L. 2000, p. 951, §§ 5-8, 5-9; Ga. L. 2002, p. 1045, § 3; Ga. L. 2003, p. 415, § 9; Ga. L. 2005, p. 334, § 17-6/HB 501; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 171, § 3/HB 1111; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 9, § 1-79/HB 1055; Ga. L. 2010, p. 932, § 7/HB 396; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 72, § 2A/SB 236.)

**The 2012 amendment**, effective January 1, 2013, added subsection (f).

**Cross references.** — Prescribed courses — Development and dissemination

of instructional materials on effect of alcohol, § 20-2-142. Mandatory instruction concerning alcohol and drug use, § 20-2-144.

## 40-5-27. Examination of applicants.

(a)(1) The department shall examine every applicant for a driver's license, except as otherwise provided in this Code section. Such examination shall include a test of the applicant's eyesight, his or her ability to understand official traffic-control devices, and his or her knowledge of safe driving practices and the traffic laws of this state and shall also include a comprehensive on-the-road driving test during which the applicant shall be required to fully demonstrate his

or her ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or general class of vehicles he or she desires a license to drive.

(2) The on-the-road driving test requirement shall not apply to any applicant for a Class C driver's license who holds a Class D driver's license issued on or after January 1, 2002.

(3) Neither the on-the-road driving test nor the knowledge test shall apply to:

(A) An applicant 18 years of age and older with a valid and current license, or a license that has been expired for less than two years, issued by another state of the United States or the District of Columbia; or

(B) An applicant who is a citizen of a foreign country with which the commissioner has entered into a reciprocal agreement pursuant to subsection (c) of Code Section 40-5-5.

(4) The examination may also include such further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. The commissioner may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any class of license.

(b) The department shall make provision for giving an examination either in the county where the applicant resides or at another place reasonably convenient to the applicant. The examination, with the exception of those required for a commercial driver's license, commercial driver's license permit, or noncommercial Class A, B, or M license, shall be given at least once each month in each county of the state.

(c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, no driver's license shall be issued to any person who does not have a visual acuity of 20/60, corrected or uncorrected, in at least one eye or better and a horizontal field of vision with both eyes open of at least 140 degrees or, in the event that one eye only has usable vision, horizontal field of vision must be at least 70 degrees temporally and 50 degrees nasally.

(2) A person whose visual acuity is less than 20/60 but better than 20/200 using spectacles, contact lenses, or the carrier portion of bioptic spectacles shall be considered eligible for a driver's license if the person is not otherwise disqualified from having a driver's license under the provisions of this article and if:

(A) The person can attain a visual acuity of at least 20/60 through utilizing bioptic telescopes;

(B) The telescopes are prescribed by a licensed optometrist or ophthalmologist;

(C) The person presents documentation of having satisfactorily completed training in the use of the bioptic telescope as certified by the prescribing doctor;

(D) The person presents documentation of an on-the-road evaluation and having satisfactorily completed any recommended training in driving while using bioptic telescopes from a certified driver's license examiner;

(E) The person completes a standard driver's education course while using the bioptic telescopes subsequent to completing evaluation or training with a driver's license examiner; and

(F) The person presents said documentation to a department operated test site and passes a driver's test examination administered by the department.

(3) A person who is licensed to drive using bioptic telescopes shall be subject to possible restrictions placed on his or her license as determined and recommended by the prescribing optometrist or ophthalmologist or the driver's license examiner. Any recommended restrictions shall be reported to the department in writing at the time the person presents himself or herself for a driver's test examination. Restrictions may include daylight driving only, outside rearview mirrors, certain area and time restrictions, no interstate driving, yearly reevaluations by an optometrist or ophthalmologist, and other such restrictions. Any restrictions shall be eligible for review and reconsideration after one year by completing all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection, including completing any additional possible testing under special conditions, as determined by the optometrist or ophthalmologist.

(4) The user of a bioptic telescope shall require renewal of his or her license every four years. However, the person must be reevaluated at least biennially by an optometrist or ophthalmologist. A certification by the optometrist or ophthalmologist that the user's visual acuity, visual field, and eye health remain stable shall be presented to the department at the time of the biennial eye examination. In the event that changes in vision are determined, the person's license shall expire and the person must successfully repeat all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection in order to have his or her license reinstated. If no significant changes occur in the user's vision at the second biennial examination in a license renewal cycle, the user's license shall be renewed without the necessity of a road test examination or any further eyesight examination.



(d) The department shall authorize licensed driver training schools to conduct on-the-road driving tests and other tests required for issuance of a driver's license as provided in this subsection. The department may authorize licensed driver training schools to issue driver's licenses to successful applicants as provided in this subsection. The department shall, prior to approving a licensed driver training school to conduct tests or issue licenses or both as provided in this subsection, make a determination that the school has been licensed for a minimum of two years and has conducted driver education courses on a full-time basis for such two-year period and that such school meets all other standards which the department may establish as a condition for approval to conduct such tests or issue licenses or both. The department shall authorize a driver training school licensed pursuant to Chapter 13 of Title 43 and approved by the department to administer the testing provided for in this Code section, provided that the applicant has successfully completed a driver training course which includes a minimum of 30 class hours of instruction and six hours of private in-car training. The department may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any Class C or Class D driver's license under this Code section. (Ga. L. 1937, p. 322, art. 4, § 4; Ga. L. 1951, p. 598, § 3; Code 1933, § 68B-208, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 10; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 3311, § 2; Ga. L. 1996, p. 1250, § 3; Ga. L. 1997, p. 760, § 14; Ga. L. 2001, p. 184, § 1-3; Ga. L. 2004, p. 749, § 4; Ga. L. 2005, p. 334, § 17-7/HB 501; Ga. L. 2005, p. 525, § 1/HB 613; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2013, p. 281, § 2/HB 475.)

**The 2013 amendment**, effective July 1, 2013, rewrote subsection (a).

#### **40-5-39. Endorsement on license of limousine chauffeur; requirements; term.**

(a) The department shall endorse the driver's license of any approved limousine chauffeur employed by a limousine carrier. In order to be eligible for such endorsement, an applicant shall:

(1) Be at least 18 years of age;

(2) Possess a valid Georgia driver's license which is not limited as defined in Code Section 40-5-64;

(3) Not have been convicted, been on probation or parole, or served time on a sentence for a period of ten years previous to the date of application for any felony or any other crime of moral turpitude or a pattern of misdemeanors that evidences a disregard for the law unless he or she has received a pardon and can produce evidence of same. For the purposes of this paragraph, a plea of nolo contendere

shall be considered to be a conviction, and a conviction for which a person has been free from custody and free from supervision for at least ten years shall not be considered a conviction unless the conviction is for a dangerous sexual offense which is contained in Code Section 42-1-12 or the criminal offense was committed against a victim who was a minor at the time of the offense;

(4) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(5) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

(b) Such endorsement shall be valid for the same term as such person's driver's license, provided that each person seeking renewal of a driver's license with such endorsement shall submit to a review of his or her criminal history for verification of his or her continued eligibility for such endorsement prior to making application for such renewal using the same process set forth in subsection (a) of this Code section. If such person no longer satisfies the background requirements set forth herein, he or she shall not be eligible for the inclusion of such endorsement on his or her driver's license, and it shall be renewed without the endorsement.

(c) Every chauffeur employed by a limousine carrier shall have his or her Georgia driver's license with the prescribed endorsement in his or her possession at all times while operating a motor vehicle of a limousine carrier.

(d) The department is authorized to promulgate rules and regulations as necessary to implement this Code section. (Code 1981, § 40-5-39, enacted by Ga. L. 2012, p. 580, § 3/HB 865.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, a misspelling of "driver's" was corrected in the last sentence of subsection (b).

## ARTICLE 3

CANCELLATION, SUSPENSION, AND REVOCATION OF  
LICENSES**40-5-55. Implied consent to chemical tests.****JUDICIAL DECISIONS****ANALYSIS****SERIOUS INJURY****Serious Injury****Accident involving serious injury.**

Following a one-car accident resulting in a fatality and other serious injuries, because a witness who observed the defendant just prior to the accident indicated that the defendant smelled of alcohol, the helicopter crew who transported the de-

fendant also noticed the smell of alcohol, and the accompanying officer observed that the defendant smelled of alcohol and had glassy eyes and slurred speech, the officer had a sufficient basis to obtain a blood sample from the defendant for testing pursuant to O.C.G.A. § 40-5-55(a). *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

**40-5-57. Suspension or revocation of license of habitually negligent or dangerous driver; point system.**

**Law reviews.** — For article, “Motor Vehicles and Traffic,” see 27 Ga. St. U.L. Rev. 155 (2011).

**40-5-57.1. Suspension of licenses of persons under age 21 for certain offenses; suspension of licenses of persons under age 18 for certain point accumulations; reinstatement of license following suspension.**

(a) Notwithstanding any other provision of this chapter, the driver’s license of any person under 21 years of age convicted of hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57, purchasing an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23, or violation of paragraph (3) or (5) of subsection (a) of Code Section 3-3-23, or violation of Code Section 40-6-391 shall be suspended by the department as provided by this Code section; and the driver’s license of any person under 18 years of age who has accumulated a violation point count of four or more points under Code Section 40-5-57 in any consecutive 12 month period shall be suspended by the department as provided by this Code section. A plea of *nolo contendere* shall be considered a conviction for purposes of this



subsection. Notice of suspension shall be given by certified mail or statutory overnight delivery, return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person. Such license shall be surrendered within ten days of notification of such suspension. Notice given by certified mail or statutory overnight delivery, return receipt requested, mailed to the person's last known address shall be prima-facie evidence that such person received the required notice.

(b) A person whose driver's license has been suspended under subsection (a) of this Code section shall:

(1) Subject to the requirements of subsection (c) of this Code section and except as otherwise provided by paragraph (2) of this subsection:

(A) Upon a first such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after six months; and

(B) Upon a second or subsequent such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after 12 months; or

(2)(A) Upon the first conviction of a violation of Code Section 40-6-391, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of six months unless the driver's blood alcohol concentration at the time of the offense was 0.08 grams or more or the person has previously been subject to a suspension pursuant to paragraph (1) of this subsection, in which case the period of suspension shall be for 12 months.

(B) Upon the second conviction of a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of 18 months.

(C) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58.

(b.1) In any case where a person's driver's license was administratively suspended as a result of a violation of Code Section 40-6-391 for

which the person's driver's license has been suspended pursuant to this Code section, the administrative license suspension period and the license suspension period provided by this Code section may run concurrently, and any completed portion of such administrative license suspension period shall apply toward completion of the license suspension period provided by this Code section.

(c)(1) Any driver's license suspended under subsection (a) of this Code section for commission of any offense other than violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a defensive driving program approved by the department and pays the applicable reinstatement fee. Any driver's license suspended under subsection (a) of this Code section for commission of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Drug or Alcohol Use Risk Reduction Program and pays the applicable reinstatement fee.

(2) The reinstatement fee for a first such suspension shall be \$210.00 or \$200.00 if paid by mail. The reinstatement fee for a second or subsequent such suspension shall be \$310.00 or \$300.00 if paid by mail.

(d) A suspension provided for in this Code section shall be imposed based on the person's age on the date of the conviction giving rise to the suspension. (Code 1981, § 40-5-57.1, enacted by Ga. L. 1997, p. 760, § 15; Ga. L. 2000, p. 951, § 5-20; Ga. L. 2000, p. 1457, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, §§ 2-2, 3-2; Ga. L. 2001, p. 208, §§ 2-2, 3-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 471, § 3; Ga. L. 2005, p. 334, §§ 17-13, 17-14/HB 501; Ga. L. 2009, p. 679, § 4/HB 160; Ga. L. 2012, p. 72, § 3/SB 236.)

**The 2012 amendment**, effective January 1, 2013, in subsection (b), substituted the present provisions of paragraph (b)(2) for the former provisions, which read: "(A) If the driver's license was suspended upon conviction for violation of Code Section 40-6-391, be subject to the provisions of Code Section 40-5-63.

"(B) If such driver was convicted of driving under the influence of alcohol or of having an unlawful alcohol concentration and is otherwise subject to the provisions of paragraph (1) of subsection (a) of Code Section 40-5-63, then such person shall not be eligible for a limited driving permit under Code Section 40-5-64, and

"(i) If the driver's alcohol concentration at the time of the offense was less than 0.08 grams, he or she shall not be eligible for license reinstatement until the end of six months; or

"(ii) If the driver's alcohol concentration at the time of the offense was 0.08 grams or more, he or she shall not be eligible for license reinstatement until the end of 12 months."; substituted "a violation of Code Section 40-6-391" for "the offense" near the beginning of subsection (b.1); added the last sentence of paragraph (c)(1); and twice substituted "suspension" for "conviction" in paragraph (c)(2).

## 40-5-58. Habitual violators; probationary licenses.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

### JUDICIAL DECISIONS

#### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

**Probationary driver’s license prevented conviction of being habitual violator operating without license.** — Because the charge of being a habitual violator operating a vehicle without a valid driver’s license, O.C.G.A. § 40-5-58(c)(1), demanded a verdict of ac-

quittal as a matter of law and the trial court erred by denying the defendant’s motion for a directed verdict; the defendant was not driving without a valid driver’s license because the arresting officer testified that the defendant had a probationary driver’s license on the day of the arrest. *Murray v. State*, 315 Ga. App. 653, 727 S.E.2d 267 (2012).

## 40-5-60. When revocation or suspension effective; notice.

### JUDICIAL DECISIONS

**Notice sufficient.** — Trial court did not err in denying the defendant’s motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with a notice of suspension pursuant to

O.C.G.A. § 40-5-60; the state introduced the defendant’s driver’s license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. *Sledge v. State*, 312 Ga. App. 97, 717 S.E.2d 682 (2011).

## 40-5-63. Periods of suspension; conditions to return of license.

(a) The driver’s license of any person convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391, unless the driver’s license has been previously suspended pursuant to Code Sections 40-5-67.1 and 40-5-67.2, shall by operation of law be suspended and such suspension shall be subject to the following terms and conditions; provided, however, that any person convicted of a drug related offense pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of Code Section 40-5-75; and further provided that each charge for which a conviction was obtained shall be treated as a separate transaction for the purpose of imposing a license suspension hereunder, even if said convictions arise from a single incident; and further provided that the department shall treat each conviction received in the order in which said convictions are processed even if it is not the order in which said offenses occurred:



(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for 12 months. At the end of 120 days, the person may apply to the department for reinstatement of said driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be \$510.00 or \$500.00 when such reinstatement is processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving program approved by the department or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. For purposes of this paragraph, an accepted plea of nolo contendere to an offense listed in Code Section 40-5-54 by a person who is under 18 years of age at the time of arrest shall constitute a conviction. For the purposes of this paragraph only, an accepted plea of nolo contendere by a person 21 years of age or older, with no conviction of and no plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered a conviction, and the court having jurisdiction shall forward, as provided in Code Section 40-6-391.1, the record of such disposition of the case to the department and the record of such disposition shall be kept on file for the purpose of considering and counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and (3) of this subsection;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for three years. At the end of 120 days, the person may apply to the department for reinstatement of such driver's license; except that if such license was suspended as a result of a second conviction of a violation of Code

Section 40-6-391 within five years, the person shall not be eligible to apply for license reinstatement until the end of 18 months. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be \$510.00 or \$500.00 when processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving program approved by the department or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program, provides proof of installation and maintenance of an ignition interlock device for a period of one year coinciding with the issuance of an ignition interlock device limited driving permit as provided in Code Section 40-5-64 unless waived due to financial hardship, and pays the prescribed restoration fee. For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period of time shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions; or

(3) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and said license shall be revoked as provided for in paragraph (1) of subsection (a) of Code Section 40-5-62. For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere and all prior accepted pleas of nolo contendere to a charge of violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo

contendere is accepted, shall be considered and counted as convictions.

(b) The periods of suspension provided for in this Code section shall begin on the date the person is convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay the applicable restoration fee. In addition to any other requirement the department may impose, a driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid, shall remain suspended, and shall not be returned to such driver or otherwise reinstated until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.

(d)(1) Any person convicted of violating subsection (a) of Code Section 40-6-393, relating to homicide by vehicle, or Code Section 40-6-394, relating to serious injury by vehicle, shall have his or her license suspended for a period of three years. Such person shall not be eligible for early reinstatement of said driver's license as provided in this Code section or in Article 4 of this chapter and shall not be eligible for a limited driving permit as provided in Code Section 40-5-64.

(2) For purposes of this chapter, an accepted plea of nolo contendere to any violation of Code Section 40-6-393 or 40-6-394 shall constitute a conviction.

(e) The driver's license of any person under 21 years of age who is convicted of unlawful possession of alcoholic beverages in violation of Code Section 3-3-23 while operating a motor vehicle may be suspended for a period of not less than 120 days. At the end of 120 days, the person may apply to the department for reinstatement of said driver's license. Such license shall be reinstated only if the person submits proof of completion of an approved DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$35.00 or \$25.00 when processed by mail. For purposes of this subsection, a sentence under subsection (c) of Code Section 3-3-23.1 shall not be considered a conviction, and the driver's license of such person shall not be suspended, provided that such person completes a DUI Alcohol or Drug Use Risk Reduction Program within 120 days after sentencing.

(f) The driver's license of any person who is convicted of attempting to purchase an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23 upon the first conviction shall be



suspended for a period of six months and upon the second or subsequent conviction shall be suspended for a period of one year. At the end of the period of suspension, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated upon payment of a restoration fee of \$35.00 or \$25.00 when processed by mail. For purposes of this subsection, a sentence under subsection (c) of Code Section 3-3-23.1 shall not be considered a conviction, and the driver's license of such person shall not be suspended. (Code 1933, § 68B-312, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1670, § 1; Ga. L. 1978, p. 225, § 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 1601, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 487, § 2; Ga. L. 1983, p. 1000, § 6; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 7; Ga. L. 1987, p. 1082, § 4; Ga. L. 1989, p. 1698, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 3; Ga. L. 1992, p. 779, § 20; Ga. L. 1992, p. 2564, § 2; Ga. L. 1992, p. 2746, § 2; Ga. L. 1992, p. 2785, §§ 9, 10; Ga. L. 1993, p. 940, § 5; Ga. L. 1994, p. 730, § 2; Ga. L. 1997, p. 760, § 16; Ga. L. 1997, p. 1085, § 3; Ga. L. 2000, p. 951, §§ 5-24, 5-25; Ga. L. 2000, p. 1457, § 2; Ga. L. 2001, p. 208, §§ 2-3, 3-3; Ga. L. 2005, p. 334, § 17-15/HB 501; Ga. L. 2006, p. 449, § 9/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 932, § 13/HB 396; Ga. L. 2011, p. 355, § 7/HB 269; Ga. L. 2013, p. 878, § 1/HB 407.)

**The 2013 amendment**, effective July 1, 2013, in paragraph (a)(2), substituted "such driver's license" for "said driver's license" in the second sentence, and substituted "one year" for "six months" in the fourth sentence. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date."

## JUDICIAL DECISIONS

**Probation condition requiring court permission to drive.** — Condition of probation requiring the defendant to seek the court's permission to drive was

within the requisite statutory parameters. *Durrance v. State*, 319 Ga. App. 866, 738 S.E.2d 692 (2013).

### 40-5-63.1. Clinical evaluation and substance abuse treatment programs for certain offenders.

In addition to any and all other conditions of license reinstatement, issuance, or restoration under Code Section 40-5-57.1, 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions for violating Code Section 40-6-391 within ten years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be required to undergo a clinical evaluation and, if recommended as a part of such evaluation, shall complete a substance abuse treatment program prior

to such license reinstatement, issuance, or restoration; provided, however, that such evaluation and treatment shall be at such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of completion of such a program shall be submitted to the department prior to license reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions. (Code 1981, § 40-5-63.1, enacted by Ga. L. 1997, p. 760, § 17; Ga. L. 2000, p. 951, § 5-26; Ga. L. 2000, p. 1457, § 3; Ga. L. 2008, p. 498, § 1/HB 336; Ga. L. 2012, p. 72, § 4/SB 236.)

**The 2012 amendment**, effective January 1, 2013, inserted "40-5-57.1," in the first sentence.

#### **40-5-64. Limited driving permits for certain offenders.**

##### **(a) To whom issued.**

(1) Notwithstanding any contrary provision of Code Section 40-5-57 or 40-5-63 or any other Code section of this chapter, any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, may apply for a limited driving permit when and only when that person's driver's license has been suspended in accordance with paragraph (2) of subsection (a.1) of Code Section 40-5-22, subsection (d) of Code Section 40-5-57, paragraph (1) of subsection (a) of Code Section 40-5-63, paragraph (1) of subsection (a) of Code Section 40-5-67.2, or subsection (a) of Code Section 40-5-57.1, when the person is 18 years of age or older and his or her license was suspended for exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour, and the sentencing judge, in his or her discretion, decides it is reasonable to issue a limited driving permit.

(2) Any person whose driver's license has been suspended as a result of a second conviction for violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, may apply for an ignition interlock limited driving permit after serving at least 120 days of the suspen-

sion required for such conviction and providing either a certificate of eligibility from a drug court program in the court in which he or she was convicted of the offense for which such suspension was imposed or by submitting proof of enrollment in clinical treatment as provided in Code Section 40-5-63.1. No person who has been granted an exemption from the ignition interlock device requirements of Article 7 of Chapter 8 of Title 42 shall be eligible for a limited driving permit or any other driving privilege for a period of one year.

(3) To the extent a person is subject to more than one suspension for which a permit may be issued, the department shall not issue such permit unless the suspensions are for a conviction for driving under the influence in violation of Code Section 40-6-391 imposed pursuant to Code Section 40-5-63 and an administrative suspension imposed pursuant to paragraph (1) of subsection (a) of Code Section 40-5-67.2 arising from the same incident.

(b) **Application form.** Applications for limited driving permits shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such permit. All applications shall be signed by the applicant before a person authorized to administer oaths.

(c) **Standards for approval.** The department shall issue a limited driving permit if the application indicates that refusal to issue such permit would cause extreme hardship to the applicant. Except as otherwise provided by subsection (c.1) of this Code section, for the purposes of this Code section, “extreme hardship” means that the applicant cannot reasonably obtain other transportation, and therefore the applicant would be prohibited from:

(1) Going to his or her place of employment;

(2) Receiving scheduled medical care or obtaining prescription drugs;

(3) Attending a college or school at which he or she is regularly enrolled as a student;

(4) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner;

(5) Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver’s license or by the commissioner;

(6) Attending court, reporting to a probation office or officer, or performing community service; or



(7) Transporting an immediate family member who does not hold a valid driver's license for work, medical care, or prescriptions or to school.

**(c.1) Exception to standards for approval.**

(1) The provisions of paragraphs (2), (3), (4), and (5) of subsection (c) of this Code section shall not apply and shall not be considered for purposes of granting a limited driving permit or imposing conditions thereon under this Code section in the case of a driver's license suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22.

(2) An ignition interlock device limited driving permit shall be restricted to allow the holder thereof to drive solely for the following purposes:

(A) Going to his or her place of employment;

(B) Attending a college or school at which he or she is regularly enrolled as a student;

(C) Attending regularly scheduled sessions or meetings of treatment support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; and

(D) Going for monthly monitoring visits with the permit holder's ignition interlock device service provider.

**(d) Conditions attached.** A limited driving permit shall be endorsed with such conditions as the commissioner deems necessary to ensure that such permit will be used by the permittee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

(1) Specific places between which the permittee may be allowed to operate a motor vehicle;

(2) Routes to be followed by the permittee;

(3) Times of travel;

(4) The specific vehicles which the permittee may operate;

(4.1) The installation and use of an ignition interlock device in accordance with Article 7 of Chapter 8 of Title 42, which shall be required for any permittee who is applying for an ignition interlock limited driving permit; and

(5) Such other restrictions as the department may require.

(e) **Fees, duration, renewal, and replacement of permit.**

(1) A permit issued pursuant to this Code section shall be \$25.00 and shall become invalid upon the driver's eighteenth birthday in the case of a suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22, upon the expiration of one year following issuance thereof in the case of a suspension for an offense listed in Code Section 40-5-54 or a suspension under Code Section 40-5-57 or a suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation of Code Section 40-6-391, or upon the expiration of 30 days in the case of an administrative license suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-67.2; except that such limited driving permit shall expire upon any earlier reinstatement of the driver's license. A person may apply to the department for a limited driving permit immediately following such conviction if he or she has surrendered his or her driver's license to the court in which the conviction was adjudged or to the department if the department has processed the citation or conviction. Upon the applicant's execution of an affidavit attesting to such facts and to the fact that the court had not imposed a suspension or revocation of his or her driver's license or driving privileges inconsistent with the driving privileges to be conferred by the limited driving permit applied for, the department may issue such person a limited driving permit. Permits issued pursuant to this Code section are renewable upon payment of a renewal fee of \$5.00. Permits may be renewed until the person has his or her license reinstated for the violation that was the basis of the issuance of the permit. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed limited driving permit issued to him or her.

(2) An ignition interlock device limited driving permit shall be valid for a period of one year. Upon successful completion of one year of monitoring of such ignition interlock device, the restriction for maintaining and using such ignition interlock device shall be removed, and the permit may be renewed for additional periods of two months as provided in paragraph (1) of this subsection.

(f) **Liability of issuing officer.** No official or employee of the department shall be criminally or civilly liable or subject to being held in contempt of court for issuing a limited driving permit in reliance on the truth of the affidavits required by this Code section.

(g) **Revocation of permit.**

(1)(A) Any permittee who is convicted of violating any state law or local ordinance relating to the movement of vehicles or any permit-

tee who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department. Any court in which such conviction is had shall require the permittee to surrender the permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction.

(B) Upon receipt of notice from the Department of Behavioral Health and Developmental Disabilities that a permittee who is required to complete a substance abuse treatment program pursuant to Code Section 40-5-63.1 enrolled in but failed to attend or complete such program as scheduled, the department shall revoke such person's limited driving permit and, by regular mail to his or her last known address, notify such person of such revocation. Such notice of revocation shall inform the person of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(C) Upon receipt of notice from a provider center for ignition interlock devices that an ignition interlock device which a permittee is required to use has been tampered with or the permittee has failed to report for monitoring of such device as required by law, the department shall revoke such permittee's limited driving permit and, by regular mail to his or her last known address, notify such person of such revocation. Such notice of revocation shall inform the person of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(2) Any person whose limited driving permit has been revoked shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department. In any case of revocation of a limited driving permit pursuant to subparagraph (A) of paragraph (1) of this subsection, the department may impose an additional period of suspension for the conviction upon which revocation of the permit was based.

(h) **Hearings.** Any person whose permit has been revoked or who has been refused a permit by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with said chapter.

(i) **Rules and regulations.** The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

(j) **Penalty.** Any permittee who operates a motor vehicle in violation of any condition specified on the permit shall be guilty of a misde-



meanor. (Code 1933, § 68B-311, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 648, § 1; Ga. L. 1978, p. 225, § 3; Ga. L. 1983, p. 1000, § 7; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 9; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 21; Ga. L. 1992, p. 2564, § 3; Ga. L. 1992, p. 2785, § 11; Ga. L. 1994, p. 1600, § 1; Ga. L. 1997, p. 760, § 18; Ga. L. 1999, p. 391, § 5; Ga. L. 2000, p. 951, § 5-27; Ga. L. 2000, p. 1457, § 4; Ga. L. 2002, p. 1324, § 1-20; Ga. L. 2003, p. 796, § 1; Ga. L. 2004, p. 471, § 6; Ga. L. 2006, p. 449, § 10/HB 1253; Ga. L. 2008, p. 171, § 7/HB 1111; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2010, p. 199, § 3/HB 258; Ga. L. 2010, p. 932, § 14/HB 396; Ga. L. 2011, p. 355, § 8/HB 269; Ga. L. 2012, p. 72, § 5/SB 236; Ga. L. 2013, p. 878, § 2/HB 407.)

**The 2012 amendment**, effective January 1, 2013, substituted “18 years of age or older” for “18 or over” near the end of paragraph (a)(1); substituted the present provisions of paragraph (a)(2) for the former provisions, which read: “Any person whose driver’s license has been suspended and who is subject to a court order for installation and use of an ignition interlock device as a condition of probation pursuant to the provisions Article 7 of Chapter 8 of Title 42 may apply for a limited driving permit.”; deleted “or performing the normal duties of his or her occupation” following “of employment” at the end of paragraph (c)(1); deleted “or” at the end of paragraph (c)(4); substituted a semicolon for a period at the end of paragraph (c)(5); added paragraphs (c)(6) and (c)(7); designated the existing provisions of subsection (c.1) as paragraph (c.1)(1); added paragraph (c.1)(2); designated the existing provisions of subsection (e) as paragraph (e)(1); in paragraph (e)(1), in the first sentence, deleted a comma following “Code Section 40-5-57”, inserted “or”,

and deleted “, or upon the expiration of six months following proof of installation of an ignition interlock device in the case of a limited driving permit issued to a person subject to a court order for installation and use of such a device pursuant to Article 7 of Chapter 8 of Title 42” following “Code Section 40-5-67.2”; and added paragraph (e)(2).

**The 2013 amendment**, effective July 1, 2013, in paragraph (a)(2), in the first sentence, substituted “apply for an ignition interlock” for “apply for a”, inserted “either” near the middle, inserted “by submitting” near the end, and added the second sentence; in paragraph (e)(2), substituted “one year” for “eight months” in the first and second sentences, and substituted “two months” for “six months” near the end of the second sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date.”

## **40-5-67.1. Chemical tests; implied consent notices; rights of motorists; test results; refusal to submit; suspension or denial; hearing and review; compensation of officers; inspection and certification of breath-testing instruments.**

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

#### **GENERAL CONSIDERATION**

#### **ADVISEMENT TO DRIVER OF RIGHTS**

#### **PRACTICE AND PROCEDURE**

### General Consideration

#### Impact of voluntary consent to test.

— Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

#### Advisement to Driver of Rights

##### Defendant was properly advised.

Trial court erred in granting a defendant's motion to suppress evidence of the defendant's refusal to submit to chemical testing on the basis that the arresting officer failed to inform the defendant, pursuant to O.C.G.A. § 40-5-67.1(b)(2), that the defendant's refusal to submit could be used against the defendant at trial. The officer informed the defendant that failure to take the test would result in loss of driving privileges for one year; thus the officer made it clear that refusing the test was not a safe harbor, free of adverse consequences. *State v. Sauls*, 315 Ga. App. 98, 728 S.E.2d 241 (2012).

Defendant was not entitled to have the results of a breath test excluded because the officer's failure to designate a specific state-administered test for which consent was being requested did not change the meaning of the notice required under O.C.G.A. § 40-5-67.1; the defendant was under notice that state-administered chemical tests would be of the defendant's blood, breath, urine, or other bodily substances. *Nagata v. State*, 319 Ga. App. 513, 736 S.E.2d 474 (2013).

### Practice and Procedure

#### Test results admissible.

Trial court did not err in denying the defendant's motion to exclude the results

of a state-administered breath test because a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was not so misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3), and thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

Trial court properly denied defendant's motion to suppress the results of the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the process go by real quick for you," was not coercive or deceptively misleading and did not render defendant incapable of making an informed decision about whether to submit to the breath test. *Miller v. State*, 317 Ga. App. 504, 731 S.E.2d 393 (2012).

## ARTICLE 3A

## SUSPENSION OF LICENSE FOR CERTAIN DRUG OFFENSES

**40-5-75. (For effective date, see note.) Suspension of licenses by operation of law.**

(a) Except as provided in Code Section 40-5-76, the driver's license of any person convicted of any violation of Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," including, but not limited to, possession, distribution, manufacture, cultivation, sale, transfer of, trafficking in, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, transfer or traffic in a controlled substance or marijuana, or the law of any other jurisdiction, shall by operation of law be suspended, and such suspension shall be subject to the following terms and conditions:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for not less than 180 days. At the end of 180 days, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays to the department a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo contendere by a person to a charge of any drug related offense listed in this subsection shall, except as provided in subsection (c) of this Code section, constitute a conviction;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for three years, provided that after one year from the date of the conviction, the person may apply to the department for reinstatement of his or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the department a restoration fee of \$310.00 or \$300.00 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo contendere and all previous pleas of nolo contendere within such five-year period of time shall constitute a conviction; and

(3) Upon the third or subsequent conviction of any such offense within five years, as measured from the dates of previous arrests for



which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person's license shall be suspended for a period of five years. At the end of two years, the person may apply to the department for a three-year driving permit upon compliance with the following conditions:

(A) Such person has not been convicted or pleaded *nolo contendere* to any drug related offense, including driving under the influence, for a period of two years immediately preceding the application for such permit;

(B) Such person submits proof of completion of a licensed drug treatment program. Such proof shall be submitted within two years of the license suspension and prior to the issuance of the permit. Such licensed drug treatment program shall be paid for by the offender. The offender shall pay a permit fee of \$25.00 to the department;

(C) Such person submits proof of financial responsibility as provided in Chapter 9 of this title; and

(D) Refusal to issue such permit would cause extreme hardship to the applicant. For the purposes of this subparagraph, the term "extreme hardship" means that the applicant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

(i) Going to his or her place of employment or performing the normal duties of his or her occupation;

(ii) Receiving scheduled medical care or obtaining prescription drugs;

(iii) Attending a college or school at which he or she is regularly enrolled as a student; or

(iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner.

At the end of five years from the date on which the license was suspended, the person may apply to the department for reinstatement of his or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the department a restoration fee of \$410.00 or \$400.00 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of *nolo contendere* and all previous pleas of *nolo contendere* within such five-year period of time shall constitute a conviction.

(a.1) Any permittee who is convicted of violating any state law or local ordinance relating to the movement of vehicles or any permittee

who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department. Any court in which such conviction is had shall require the permittee to surrender the permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction. Any person whose limited driving permit has been revoked shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department.

(b) Except as provided in Code Section 40-5-76, whenever a person is convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled substance or marijuana, or driving or being in actual physical control of any moving vehicle while under the influence of such substance in violation of subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code Section 16-13-30, or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391; or the law of any other jurisdiction, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The periods of suspension provided for in this Code section shall begin on the date of surrender of the driver's license or on the date that the department processes the conviction or citation, whichever shall first occur.

(c)(1) The decision to accept a plea of nolo contendere to a misdemeanor charge of unlawful possession of less than one ounce of marijuana shall be at the sole discretion of the judge. If a plea of nolo contendere is accepted as provided in this subsection, the judge shall, as a part of the disposition of the case, order the defendant to attend and complete a DUI Alcohol or Drug Use Risk Reduction Program. The order shall stipulate that the defendant shall complete such program within 120 days and that the defendant shall submit evidence of such completion to the department. The judge shall also notify the defendant that, if he or she fails to complete such program by the date specified in the court's order, his or her driver's license shall be suspended, by operation of law, as provided in this Code section. The record of the disposition of the case shall be forwarded to the department.

(2) If a plea of nolo contendere is accepted and the defendant's driver's license has not been suspended under any other provision of this title and if the defendant has not been convicted of or has not had a plea of nolo contendere accepted to a charge of violating this Code section within the previous five years, the court shall, subject to paragraph (1) of this subsection, return the driver's license to the

person; otherwise, such driver's license shall be forwarded to the department.

(d) Application for reinstatement of a driver's license under paragraph (1) or (2) of subsection (a) of this Code section shall be made on such forms as the commissioner may prescribe and shall be accompanied by proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. Application for a three-year driving permit under paragraph (3) of subsection (a) of this Code section shall be made on such form as the commissioner may prescribe and shall be accompanied by proof of completion of an approved residential drug treatment program and a fee of \$25.00 for such permit.

(e) Notwithstanding any other provision of this Code section or any other provision of this chapter, any person whose license is suspended pursuant to this Code section shall not be eligible for early reinstatement of his or her license and shall not be eligible for a limited driving permit, but such person's license shall be reinstated only as provided in this Code section or Code Section 40-5-76.

(f) Except as provided in subsection (a) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person's license has been suspended pursuant to this Code section if such person has not thereafter obtained a valid license. Any person who is convicted of operating a motor vehicle before the department has reinstated such person's license or issued such person a three-year driving permit shall be punished by a fine of not less than \$750.00 nor more than \$5,000.00 or by imprisonment in the penitentiary for not more than 12 months, or both.

(g) (For effective date, see note.) Notwithstanding the provisions of Code Section 15-11-606 and except as provided in subsection (c) of this Code section, an adjudication of a minor child as a delinquent child for any offense listed in subsection (a) of this Code section shall be deemed a conviction for purposes of this Code section.

(h) Notwithstanding the provisions of subsection (a) of this Code section, licensed drivers who are 16 years of age who are adjudicated in a juvenile court pursuant to this Code section may, at their option, complete a DUI Alcohol or Drug Use Risk Reduction Program or an assessment and intervention program approved by the juvenile court.

(i) Notwithstanding any other provision of this chapter to the contrary, the suspension imposed pursuant to this Code section shall be in addition to and run consecutively to any other suspension imposed by the department at the time of the conviction that results in said suspension. If the person has never been issued a driver's license in the State of Georgia or holds a driver's license issued by another state, the



person shall not be eligible for a driver's license for the applicable period of suspension following his or her submission of an application for issuance thereof. (Code 1981, § 40-5-75, enacted by Ga. L. 1990, p. 1149, § 1; Ga. L. 1990, p. 1097, § 1.5; Ga. L. 1991, p. 1767, § 1; Ga. L. 1992, p. 779, § 25; Ga. L. 1992, p. 2785, § 13; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 730, §§ 3-5; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 20, § 23; Ga. L. 2000, p. 951, § 5-39; Ga. L. 2004, p. 471, § 7; Ga. L. 2005, p. 334, § 17-16/HB 501; Ga. L. 2006, p. 449, § 11/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 117, § 1/HB 419; Ga. L. 2009, p. 679, § 7/HB 160; Ga. L. 2010, p. 932, § 15/HB 396; Ga. L. 2011, p. 355, § 10/HB 269; Ga. L. 2013, p. 222, § 15/HB 349; Ga. L. 2013, p. 294, § 4-47/HB 242.)

**Delayed effective date.** — Subsection (g), as set out above, becomes effective January 1, 2014. For version of subsection (g) in effect until January 1, 2014, see the second 2013 amendment note.

**The 2013 amendments.** — The first 2013 amendment, effective July 1, 2013, substituted “the department” for “the Department of Driver Services” throughout subsection (a); in the introductory paragraph of subsection (a), substituted “Except as provided in Code Section 40-5-76, the” for “The” at the beginning, inserted “Article 2 of Chapter 13 of Title 16,” and inserted quotes around “Georgia Controlled Substances Act,” near the middle; substituted “Except as provided in Code Section 40-5-76, whenever” for “Whenever” at the beginning of subsection (b); and, in subsection (e), inserted “or her” near the middle and added “or Code Section 40-5-76” at the end. See editor’s note for applicability. The second 2013 amendment, effective January 1, 2014, in subsection (g), substituted “Code Section 15-11-606” for “Code Section 15-11-72” near the beginning, and deleted “or an unruly child” following “delinquent child”

near the end. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense.”

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

## **40-5-76. Restoration or suspension of defendant’s driver’s license or issuance of limited driving permit.**

A judge presiding in a drug court division or mental health court division may order the department to restore a defendant’s driver’s license that has been or should be suspended pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited driving permit in accordance with the provisions set forth in subsections (c) and (d) of Code Section 40-5-64 or with whatever conditions the court

determines to be appropriate under the circumstances as a reward or sanction to the defendant's behavior in such court division. The court shall determine what fees, if any, shall be paid to the department for such reward or sanction, provided that such fee shall not be greater than the fee normally imposed for such services. (Code 1981, § 40-5-76, enacted by Ga. L. 2013, p. 222, § 16/HB 349.)

**Effective date.** — This Code section became effective July 1, 2013. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall be-

come effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

## ARTICLE 6

### MISCELLANEOUS OFFENSES AND JURISDICTION OF OFFENSES

#### 40-5-121. Driving while license suspended or revoked.

#### JUDICIAL DECISIONS

**Notice sufficient evidence to convict.**

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with notice of suspension pursuant

to O.C.G.A. § 40-5-60; the state introduced the defendant's driver's license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. *Sledge v. State*, 312 Ga. App. 97, 717 S.E.2d 682 (2011).

## ARTICLE 7

### COMMERCIAL DRIVERS' LICENSES

#### 40-5-153. Implied consent to chemical test; administration of test; procedure.

#### JUDICIAL DECISIONS

**Warning not required for alco-sensor test.** — O.C.G.A. § 40-5-153(c), regarding implied consent warnings of commercial drivers, did not apply to an alco-sensor test, which merely detected the presence, not concentration,

of alcohol that was given to a driver who drove past an inspection station in a truck with a hazardous materials placard. *Tunali v. State*, 311 Ga. App. 844, 717 S.E.2d 341 (2011).

CHAPTER 6

UNIFORM RULES OF THE ROAD

Article 1

Sec.

General Provisions

bodies; crossing streets under jurisdiction of Department of Transportation.

Sec.

40-6-10. Insurance requirements for operation of motor vehicles generally.

Article 15

Serious Traffic Offenses

Traffic Signs, Signals, and Markings

40-6-391. (For effective date, see note.) Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.

40-6-22. Pedestrian-control signals.

Article 11

Miscellaneous Provisions

40-6-248.1. Securing loads on vehicles.  
40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.

40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.

Article 13

Special Provisions for Certain Vehicles

PART 3

MOTORIZED CARTS

40-6-331. Authority of local governing

Cross references. — Observance of laws by motor carriers, § 40-1-122.

ARTICLE 1

GENERAL PROVISIONS

40-6-6. Authorized emergency vehicles.

Law reviews. — For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION



### Application

#### **Injury resulting from police officer's high speed pursuit.**

In a wrongful death action by a decedent's estate and her children against the county sheriff, the relevant conduct supporting a finding of proximate cause under O.C.G.A. § 40-6-6 was the decision of the sheriff's deputy to initiate or continue pursuing a fleeing suspect, not how the deputy drove the vehicle during the course of the pursuit. Thus, the trial court did not err in denying summary judgment on proximate cause grounds when there was some evidence from which a reasonable jury could have concluded that the deputy chose to continue the pursuit with conscious indifference to whether continuing the pursuit violated proper law enforcement procedures. *Strength v. Lovett*, 311

Ga. App. 35, 714 S.E.2d 723 (2011), cert. denied, No. S11C1794, 2011 Ga. LEXIS 979 (Ga. 2011).

Trial court erred in granting summary judgment to the city because genuine issues of material fact remained as to whether, under O.C.G.A. § 40-6-6(d)(2), the officer acted with reckless disregard of proper law enforcement procedures and the officer's actions were thus the proximate cause of the collision between the fleeing suspect and the driver. The driver's and passenger's affidavits were sufficient to create genuine issues of material fact regarding whether the officer acted with reckless disregard for proper law enforcement procedures in the officer's pursuit, which may be found to constitute a proximate cause of the driver's injuries. *Ray v. City of Griffin*, 318 Ga. App. 426, 736 S.E.2d 110 (2012).

### **40-6-10. Insurance requirements for operation of motor vehicles generally.**

(a)(1) As used in this Code section, the term "mobile electronic device" means a portable computing and communication device that has a display screen with touch input or a miniature keyboard.

(1.1) Upon the request of the insured, an insurer may issue a verification as to the existence of minimum motor vehicle liability insurance coverage as required under Chapter 34 of Title 33 in an electronic format to a mobile electronic device to the extent available. This paragraph shall not require an insurer to provide such verification of coverage in real time.

(1.2) The owner or operator of a motor vehicle for which minimum motor vehicle liability insurance coverage is required under Chapter 34 of Title 33 shall keep proof or evidence of required minimum insurance coverage in the vehicle at all times during the operation of the vehicle. The owner of a motor vehicle shall provide to any operator of such vehicle proof or evidence of required minimum insurance coverage for the purposes of compliance with this subsection. The proof or evidence of required minimum insurance coverage required by this subsection may be produced in either paper or electronic format. Acceptable electronic formats include a display of electronic images on a mobile electronic device.

(2) The following shall be acceptable proof of insurance on a temporary basis:

(A) If the policy providing such coverage was applied for within the last 30 days, a current written binder for such coverage for a period not exceeding 30 days from the date such binder was issued shall be considered satisfactory proof or evidence of required minimum insurance coverage;

(B) If the vehicle is operated under a rental agreement, a duly executed vehicle rental agreement shall be considered satisfactory proof or evidence of required minimum insurance coverage; and

(C) If the owner acquired ownership of the vehicle within the past 30 days, if the type of proof described in subparagraph (A) of this paragraph is not applicable but the vehicle is currently effectively provided with required minimum insurance coverage under the terms of a policy providing required minimum insurance coverage for another motor vehicle, then a copy of the insurer's declaration of coverage under the policy providing such required minimum insurance coverage for such other vehicle shall be considered satisfactory proof or evidence of required minimum insurance coverage for the vehicle, but only if accompanied by proof or evidence that the owner acquired ownership of the vehicle within the past 30 days.

(2.1) If the vehicle is insured under a fleet policy as defined in Code Section 40-2-137 providing the required minimum insurance coverage or if the vehicle is engaged in interstate commerce and registered under the provisions of Article 3A of Chapter 2 of this title, the insurance information card issued by the insurer shall be considered satisfactory proof of required minimum insurance coverage for the vehicle.

(2.2) If the vehicle is insured under a certificate of self-insurance issued by the Commissioner of Insurance providing the required minimum insurance coverage under which the vehicle owner did not report the vehicle identification number to the Commissioner of Insurance, the insurance information card issued by the Commissioner of Insurance shall be considered satisfactory proof of required minimum insurance coverage for the vehicle, but only if accompanied by a copy of the certificate issued by the Commissioner of Insurance.

(3) The requirement under this Code section that proof or evidence of minimum liability insurance be maintained in a motor vehicle at all times during the operation of the vehicle or produced in electronic format shall not apply to the owner or operator of any vehicle for which the records or data base of the Department of Revenue indicates that required minimum insurance coverage is currently effective.

(4) Except as otherwise provided in paragraph (7) of this subsection, any person who fails to comply with the requirements of this

subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(5) Every law enforcement officer in this state shall determine if the operator of a motor vehicle subject to the provisions of this Code section has the required minimum insurance coverage every time the law enforcement officer stops the vehicle or requests the presentation of the driver's license of the operator of the vehicle.

(6) If a law enforcement officer of this state determines that the owner or operator of a motor vehicle subject to the provisions of this Code section does not have proof or evidence of required minimum insurance coverage, the arresting officer shall issue a uniform traffic citation for operating a motor vehicle without proof of insurance. If the court or arresting officer determines that the operator is not the owner, then a uniform traffic citation may be issued to the owner for authorizing the operation of a motor vehicle without proof of insurance.

(7) If the person receiving a citation under this subsection shows to the court having jurisdiction of the case that required minimum insurance coverage was in effect at the time the citation was issued, the court may impose a fine not to exceed \$25.00. The court shall not in this case forward a record of the disposition of the case to the department, and the driver's license of such person shall not be suspended.

(8)(A) For purposes of this Code section, a valid insurance card or verification in electronic format on a mobile electronic device shall be sufficient proof of insurance only for any vehicle covered under a fleet policy as defined in Code Section 40-2-137. The insurance card or verification in electronic format on a mobile electronic device for a fleet policy shall contain at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, and the name of the insured and may, but shall not be required to, include the year, make, model, and vehicle identification number of the vehicle insured. If the operator of any vehicle covered under a fleet policy as defined in Code Section 40-2-137 presents a valid insurance card or verification in electronic format on a mobile electronic device for a fleet policy to any law enforcement officer or agency, and the officer or agency does not recognize the insurance card or verification in electronic format on a mobile electronic device as valid proof of insurance and impounds or tows such vehicle for lack of proof of insurance, the law enforcement agency or political subdivision shall be liable for and limited to the fees of the wrongful impoundment or towing of the vehicle, which in



no way waives or diminishes any sovereign immunity of such governmental entity. If a person displays verification in electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(B) For any vehicle covered under a policy of motor vehicle liability insurance that is not a fleet policy as defined in Code Section 40-2-137, the insurer shall issue a policy information card which shall contain, or may make available in an electronic format on a mobile electronic device, at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, name of the insured, and year, make, model, and vehicle identification number of each vehicle insured; the owner or operator of the motor vehicle shall keep such policy information card in the vehicle at all times during operation of the vehicle for purposes of Code Section 40-6-273.1, but any such policy information card or policy information in an electronic format on a mobile electronic device shall not be sufficient proof of insurance for any purposes of this Code section except as otherwise provided in this Code section. If a person displays policy information in an electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(b) An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle without effective insurance on such vehicle or without an approved plan of self-insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both. An operator of a motor vehicle shall not be guilty of a violation of this Code section if such operator maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive. An owner or operator of a motor vehicle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the department.

(c) Any person who knowingly makes a false statement or certification under Code Section 40-5-71 or this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(d) Except for vehicles insured under a fleet policy as defined in Code Section 40-2-137 or under a plan of self-insurance approved by the

Commissioner of Insurance, insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section. (Code 1981, § 40-6-10, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 1079, § 1; Ga. L. 2000, p. 429 §§ 5, 5A; Ga. L. 2001, p. 1228, § 2A; Ga. L. 2002, p. 1, § 1; Ga. L. 2003, p. 261, § 5; Ga. L. 2005, p. 334, § 18-1/HB 501; Ga. L. 2008, p. 209, § 1/HB 1235; Ga. L. 2010, p. 143, § 10/HB 1005; Ga. L. 2011, p. 99, § 59/HB 24; Ga. L. 2013, p. 607, § 1/HB 254.)

**The 2013 amendment**, effective May 6, 2013, added paragraphs (a)(1) and (a)(1.1); redesignated former paragraph (a)(1) as present paragraph (a)(1.2); in paragraph (a)(1.2), added the third and fourth sentences; inserted “or produced in electronic format” near the middle of paragraph (a)(3); in subparagraph (a)(8)(A), inserted “or verification in electronic format on a mobile electronic device” throughout and added the last sentence; in subparagraph (a)(8)(B), in the first sentence, inserted “, or may make available in

an electronic format on a mobile electronic device,” near the middle, inserted “or policy information in an electronic format on a mobile electronic device” near the end, and added the second sentence.

**Cross references.** — Motor carrier bond or insurance, § 40-1-112.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

## JUDICIAL DECISIONS

### Evidence supported guilty verdict.

Evidence that a defendant received and drove a car following the defendant’s father’s death and drove the car without procuring insurance for the car was sufficient to prove a violation of O.C.G.A. § 40-6-10. *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

### Sentence not unconstitutional. —

Defendant’s sentence of 12 months confinement to be served on probation following 60 days of confinement, \$1,500 in

finer, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving without insurance, and failing to register a vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. *Smith v. State*, 311 Ga. App. 184, 715 S.E.2d 434 (2011).

**Cited** in *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

## 40-6-11. Insurance requirements for operation of motorcycles.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

**40-6-14. Limits on sound volume produced by radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle.**

**JUDICIAL DECISIONS**

**Investigatory stop after officer hears loud music.**

In a case in which the defendant appealed a conviction for violating 18 U.S.C. § 922(g)(1), the defendant unsuccessfully argued that the district court erred in denying the defendant's motion to suppress the evidence seized from the defendant's automobile after being stopped by a police officer for violating O.C.G.A. § 40-6-14(a). The officer testified at the suppression hearing that the officer heard a loud thumping sound coming from the radio in defendant's automobile when the officer was located one block away from

the defendant and that the officer heard the automobile before seeing it; a reasonable officer in the officer's position could have believed that the music was audible more than one-hundred feet away on the basis of those observations, and any mistake of fact by the officer in evaluating the distance from defendant's car was a reasonable one, and the officer did not violate the Fourth Amendment by stopping defendant for violation of the noise statute. *United States v. Smalls*, No. 11-12621, 2012 U.S. App. LEXIS 1203 (11th Cir. Jan. 19, 2012) (Unpublished).

**40-6-15. Knowingly driving motor vehicle on suspended, canceled, or revoked registration a misdemeanor; punishment.**

**JUDICIAL DECISIONS**

**Evidence insufficient.** — Evidence that a defendant received and drove a car following the defendant's father's death was insufficient to prove a violation of O.C.G.A. § 40-6-15 because there was no

evidence from which the jury could infer that the defendant knew that the car was not registered. *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

**ARTICLE 2**

**TRAFFIC SIGNS, SIGNALS, AND MARKINGS**

**40-6-20. Obedience to traffic-control devices required; presumptions; enforcement by traffic-control signal monitoring devices.**

**JUDICIAL DECISIONS**

**Cited in** *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).



40-6-22. Pedestrian-control signals.

Whenever special pedestrian-control signals exhibiting the words WALK or DON'T WALK or symbols so directing a pedestrian are in place, such signals shall indicate as follows:

(1) **Word or symbol message WALK.** Pedestrians facing such signal may proceed across the roadway in the direction of the signal. Every driver of a vehicle shall stop and remain stopped for such pedestrians; and

(2) **Flashing or steady DON'T WALK.** No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the WALK signal shall proceed to sidewalk or safety island while the DON'T WALK signal is showing. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 36; Code 1933, § 68A-203, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 2; Ga. L. 2013, p. 141, § 40/HB 79.)

**The 2013 amendment,** effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (1) and (2).

ARTICLE 3

DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, FOLLOWING TOO CLOSELY

40-6-40. Vehicles to drive on right side of roadway; exceptions.

JUDICIAL DECISIONS

**Sufficient evidence supported conviction.**

Sufficient evidence supported the defendant's conviction for driving on the wrong side of the roadway because the defendant, who was traveling southbound on a highway, veered off the west shoulder, then veered back onto the roadway and traveled across the southbound and northbound lanes, left the roadway on the east shoulder, rotated clockwise, and struck a tree, resulting in a fatality and other serious injuries. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

**Offense justified stop.**

Trial court did not err in denying the defendant's motion to suppress because the officer was authorized to perform a traffic stop since the officer saw the defen-

dant cross the solid double yellow line and then drive on the wrong side of the road; because driving on the wrong side of the road was itself a traffic offense, O.C.G.A. § 40-6-40, the officer had a reasonable articulable suspicion that a traffic offense had occurred. *Parker v. State*, 317 Ga. App. 93, 730 S.E.2d 717 (2012).

Trial court erred in granting the defendant's motion to suppress because the undisputed facts showed that the officer observed the defendant veer into and drive on the wrong side of the road and because driving on the wrong side was a traffic offense under O.C.G.A. § 40-6-40, the officer had reasonable articulable suspicion that a traffic offense had occurred. *State v. Zeth*, 320 Ga. App. 140, 739 S.E.2d 443 (2013).

## 40-6-48. Driving on roadways laned for traffic.

### JUDICIAL DECISIONS

#### Justified stop.

Trial court did not err in denying the defendant's motion to suppress because the officer was justified in stopping the defendant's vehicle based on the videotaped evidence that established that the officer observed the defendant's vehicle failing to maintain the vehicle's lane in violation of O.C.G.A. § 40-6-48(1). *Acree v. State*, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

**Evidence was sufficient to sustain a conviction, etc.**

Evidence that the defendant failed to maintain the vehicle within a single lane when making a wide right turn and then again after completing the turn supported the defendant's conviction for failure to maintain lane. *King v. State*, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

**Cited in** *Jones v. State*, 319 Ga. App. 678, 738 S.E.2d 130 (2013); *State v. Zeth*, 320 Ga. App. 140, 739 S.E.2d 443 (2013).

## 40-6-49. Following too closely.

### JUDICIAL DECISIONS

#### Violation as basis for traffic stop.

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted, because the officer had probable cause to believe that the car was following too closely since it was not "contrary to the laws of nature" that a car traveling slower than the flow of traffic could position itself very closely to another car just after changing lanes. *United States v. Whitlock*, No. 12-10989, 2012 U.S. App. LEXIS 21853 (11th Cir. Oct. 19, 2012) (Unpublished).

#### Investigative stop held proper. —

Trial court did not err in denying the defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49. *Warren v. State*, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

#### Evidence sufficient for conviction.

Evidence adduced at trial was sufficient to authorize the jury to find the defendant

guilty of violating O.C.G.A. § 40-6-49 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information. *Sevostyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

#### Instructions.

Trial court distinguished between the counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. *Sevostyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Comma inadvertently added to the state's requested charge on O.C.G.A. § 40-6-49(d) was harmless because the trial court read the charges aloud and the jury did not see the written charge. *Sevostyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Trial court did not err in charging the jury on O.C.G.A. § 40-6-49(a) because the trial court charged the jury and then explained the term "following" by the court's

charge on § 40-6-49(d); there was no variance between the accusation and the proof at trial on the count charging the defendant with violating § 40-6-49.

Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

## ARTICLE 4

### RIGHT OF WAY

#### 40-6-70. Vehicles approaching or entering intersection.

##### JUDICIAL DECISIONS

**DOT granted summary judgment in personal injury action.** — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic

control devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injures. *Bennett v. Ga. DOT*, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

#### 40-6-72. Stop signs and yield signs.

##### JUDICIAL DECISIONS

**DOT without liability when stop sign present.** — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic control

devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injures. *Bennett v. Ga. DOT*, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

## ARTICLE 5

### RIGHTS AND DUTIES OF PEDESTRIANS

#### 40-6-91. Right of way in crosswalks.

##### JUDICIAL DECISIONS

**Instruction on accident.** — Appellate court erred in reversing defendant's conviction for vehicular homicide based on her failure to stop for a pedestrian in a crosswalk because those charges were

strict liability offenses to which the accident defense did not apply since it was undisputed she voluntarily drove into the crosswalk and struck the child. *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).



40-6-92. Crossing roadway elsewhere than at crosswalk.

JUDICIAL DECISIONS

**Crossing outside of crosswalk.** — While O.C.G.A. § 40-6-92(a) does not absolutely prohibit a pedestrian from crossing the roadway outside of a crosswalk, the statute mandates that under those conditions, the pedestrian shall yield the right of way to all vehicles upon the roadway unless the pedestrian has already, and under safe conditions, entered the roadway. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

40-6-95. Pedestrian under influence of alcohol or drug.

JUDICIAL DECISIONS

**Not applicable in tort action.** — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. *Swinney v. Schneider Nat'l Carriers, Inc.*, 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

**Cited in** *White v. State*, 310 Ga. App. 386, 714 S.E.2d 31 (2011).

40-6-96. Pedestrians on or along roadway.

JUDICIAL DECISIONS

**Not applicable in tort action.** — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. *Swinney v. Schneider Nat'l Carriers, Inc.*, 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

ARTICLE 6

TURNING, STARTING, SIGNALING

40-6-120. Methods of turning at intersections.

JUDICIAL DECISIONS

**Turning right from lane adjacent to right-hand lane.** — Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of O.C.G.A. § 40-6-120(a)(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. *State v. Mincher*, 313 Ga. App. 875, 723 S.E.2d 300 (2012).

### 40-6-123. Turning movements; signals required on turning, changing lanes, slowing, or stopping.

#### JUDICIAL DECISIONS

##### **Failure to signal for lane change.**

Evidence, viewed in the light most favorable to the prosecution, authorized the jury to find that the defendant turned without signaling because a patrol officer testified that the officer saw that the defendant twice failed to use a turn signal when traffic conditions required the defendant to do so. *Nunnally v. State*, 310 Ga. App. 183, 713 S.E.2d 408 (2011).

Trial court did not err in denying defendant's motion to suppress on the ground that the traffic stop was improperly based on a violation of O.C.G.A. § 40-6-123 for movement of a vehicle into the dedicated turn lane without a signal because there existed a reasonable articulable suspicion for a brief investigatory stop of the vehicle based on the officer's observation that defendant was not wearing a seatbelt. The seatbelt violation alone authorized a stop of the vehicle. *Wilson v. State*, 318 Ga. App. 59, 733 S.E.2d 365 (2012).

##### **Probable cause to stop vehicle.**

While the state failed to adduce direct evidence showing, at the moment the vehicle was at the subdivision's exit, the precise location of the cars that were later stopped in front of or behind the vehicle at the next intersection, a reasonable inference arose from the officer's testimony

that the cars stopped at the stop sign with the vehicle had exited the nearby driveway at a time such that the driver of the vehicle defendant was riding in was required to signal the driver's intent to turn. Thus, the evidence obtained as a result of the traffic stop was admissible. *Morgan v. State*, 309 Ga. App. 740, 710 S.E.2d 922 (2011).

**Summary judgment improper on issue of negligence.** — Trial court erred in granting a driver summary judgment in a children's wrongful death action because the evidence was sufficient to create a genuine issue of material fact on the questions of whether the driver acted negligently and whether the driver's negligence was a concurring proximate cause of the collision that resulted in the death of the children's father; a jury hearing the evidence could find that the driver failed to keep a proper lookout as the driver proceeded down the highway, made an unnecessarily sudden stop without warning as the driver approached the cross street, and was a concurring proximate cause of the collision that killed the father. *Hayes v. Crawford*, 317 Ga. App. 75, 730 S.E.2d 26 (2012).

**Cited in** *Stinson v. State*, 318 Ga. App. 351, 733 S.E.2d 390 (2012).

## ARTICLE 9

### SPEED RESTRICTIONS

### 40-6-181. Maximum limits.

#### JUDICIAL DECISIONS

**Speeding merged into reckless driving.** — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless

driving. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

**Jury question alleged as to whether cause of collision excessive speed.**

Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was

no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defen-

dant had no safer option. *Jones v. State*, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

**Cited** in *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

#### **40-6-184. Impeding traffic flow; minimum speed in left-hand lanes.**

### **JUDICIAL DECISIONS**

**Investigative stop held proper.** — Trial court did not err in denying defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a

citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49. *Warren v. State*, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

## **ARTICLE 10**

### **STOPPING, STANDING, AND PARKING**

#### **PART 1**

#### **GENERAL PROVISIONS**

#### **40-6-206. When police officers may remove vehicles.**

### **JUDICIAL DECISIONS**

**Cited** in *Ahmad v. State*, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

#### **PART 2**

#### **PARKING FOR PERSONS WITH DISABILITIES**

#### **40-6-228. Enforcement.**

**Law reviews.** — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).



## ARTICLE 11

## MISCELLANEOUS PROVISIONS

**40-6-241. Driver to exercise due care; proper use of radios and mobile telephones allowed.**

**Law reviews.** — For article, “Motor Vehicles and Traffic,” see 27 Ga. St. U.L. Rev. 155 (2011).

**40-6-248.1. Securing loads on vehicles.**

(a) As used in this Code section, the term “litter” has the meaning provided by paragraph (1) of Code Section 16-7-42.

(a.1) No vehicle shall be driven or moved on any public road unless such vehicle is constructed or loaded or covered so as to prevent any of its load from dropping, escaping, or shifting in such a manner as to:

(1) Create a safety hazard; or

(2) Deposit litter on public or private property while such vehicle is on a public road.

However, this Code section shall not prohibit the necessary spreading of any substance in public road maintenance or construction operations.

(b) No person shall operate or load for operation, on any public road, any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from:

(1) Becoming loose, detached, or in any manner becoming a hazard to other users of the public road; or

(2) Depositing litter on public or private property while such vehicle is on a public road.

(c) No motor carrier shall allow a commercial motor vehicle to be driven and no person shall operate a commercial motor vehicle with a load that is not secure. Loads shall be secured as required by state and federal law, rule, and regulation. As used in this subsection, the term “load” shall include loads consisting of liquids and gases as well as solid materials.

(d) Nothing in this Code section nor any regulations based thereon shall conflict with federal, Department of Public Safety, or Board of Public Safety regulations applying to the securing of loads on motor vehicles.

(e) The provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b) of this Code section and regulations based thereon

shall not apply to organic debris that escapes during the transportation of silage from field or farm to storage and storage to feedlot or during the transportation of agricultural or farm products or silvicultural products from farm or forest to a processing plant or point of sale or use. (Code 1933, § 95A-955, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 705, § 1; Ga. L. 2002, p. 1270, § 1; Code 1981, § 32-6-21; Code 1981, § 40-6-248.1, as redesignated by Ga. L. 2006, p. 275, § 3-9/HB 1320; Ga. L. 2012, p. 580, § 10/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 18/HB 323.)

**The 2012 amendment**, effective July 1, 2012, substituted “Georgia Department of Public Safety” for “, Georgia Public Service Commission” near the middle of subsection (c).

**The 2013 amendments.** — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Department of Public Safety, or Board of Public Safety” for “Georgia Department of Public Safety, or Georgia Board of Public Safety” in subsection (c) (now subsection (d)). The second 2013 amendment, effective July 1, 2013, substituted “such covering” for “said covering” in the introductory paragraph of subsection (b); added subsection (c); red-

esignated former subsections (c) and (d) as present subsections (d) and (e), respectively; and, in subsection (d), deleted “Georgia” preceding “Department” and preceding “Board”. See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, a comma that was inadvertently deleted was inserted following “federal” in subsection (c) (now (d)).

**Editor’s notes.** — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

#### **40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.**

(a) As used in this Code section, the term:

(1) “Alcoholic beverage” means:

(A) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(B) Wine of not less than one-half of 1 percent of alcohol by volume; or

(C) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

(2) “Open alcoholic beverage container” means any bottle, can, or other receptacle that:

- (A) Contains any amount of alcoholic beverage; and
- (B)(i) Is open or has a broken seal; or
- (ii) The contents of which are partially removed.

A container that has been sealed or resealed pursuant to Code Section 3-5-4 or 3-6-4 shall not constitute an open alcoholic beverage container for purposes of this Code section.

(3) “Passenger area” means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position; provided, however, that such term does not include any locked glove compartment or, in a passenger car not equipped with a trunk, any area behind the rearmost upright seat or not normally occupied by the driver or passengers.

(b)(1) A person shall not:

- (A) Consume any alcoholic beverage; or
- (B) Possess any open alcoholic beverage container

in the passenger area of any motor vehicle which is on the roadway or shoulder of any public highway.

(2) The provisions of paragraph (1) of this subsection shall not apply to any passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or house trailer.

(3) Only a person who consumes an alcoholic beverage or possesses an open alcoholic beverage container in violation of this Code section shall be charged with such offense; provided, however, that an operator of a motor vehicle who is alone in the passenger area of such motor vehicle shall be deemed to be in possession of any open alcoholic beverage container in such passenger area.

(c) Any person who violates this Code section is subject to a fine not to exceed \$200.00. (Code 1981, § 40-6-253, enacted by Ga. L. 1991, p. 1587, § 2; Ga. L. 2001, p. 208, § 1-4; Ga. L. 2008, p. 834, § 2/SB 55; Ga. L. 2013, p. 617, § 2/HB 99.)

**The 2013 amendment**, effective July 1, 2013, in the ending undesignated paragraph of paragraph (a)(2), substituted “A

container that has been sealed or” for “A bottle of wine that has been” at the beginning and inserted “3-5-4 or” in the middle.

## JUDICIAL DECISIONS

**Evidence sufficient for conviction.**  
Sufficient evidence supported the defen-

dant’s conviction for possession of an open alcoholic beverage container in the pas-



senger area of a motor vehicle, while operating the vehicle, because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, and a clear plastic bottle contain-

ing 77 proof alcohol was found on the floorboard. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

**Cited in** *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

## ARTICLE 12

### ACCIDENTS

#### 40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.

### JUDICIAL DECISIONS

#### ANALYSIS

##### GENERAL CONSIDERATION PRACTICE AND PROCEDURE

#### General Consideration

**Instruction on knowledge.** — Trial court distinguished between the counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

#### Evidence sufficient for conviction.

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-395(a) and (b)(5)(A), 40-6-270(a), and 40-6-271(a), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. *Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Jury was authorized to find that the defendant "knowingly" failed to comply with O.C.G.A. § 40-6-270 because the victim testified that the defendant hit the

victim's car, the car was damaged, the victim showed the defendant the damage to the car, and the defendant left without giving the information required. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence adduced at trial was sufficient to authorize the jury to find the defendant guilty of violating O.C.G.A. § 40-6-270 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

#### Practice and Procedure

#### Rule of lenity did not apply to hit-and-run and vehicular homicide.

— Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. *Rouen v. State*, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

**40-6-271. Duty upon striking unattended vehicle.****JUDICIAL DECISIONS****Evidence sufficient.**

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-395(a) and (b)(5)(A), 40-6-270(a), and 40-6-271(a), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle.

*Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence was amply sufficient for a rational finder of fact to find the defendant guilty beyond a reasonable doubt of violating O.C.G.A. § 40-6-271 because the defendant struck two separate unattended vehicles in a parking lot, and both victims testified at trial that the victims saw the collisions occur and that the driver left the scene without speaking to either of the victims, leaving a note, or providing any contact information. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

**ARTICLE 13****SPECIAL PROVISIONS FOR CERTAIN VEHICLES****PART 1****BICYCLES AND PLAY VEHICLES****40-6-296. Lights and other equipment on bicycles.****JUDICIAL DECISIONS**

**Cited in** *State v. Hammond*, 313 Ga. App. 882, 723 S.E.2d 89 (2012).

**PART 3****MOTORIZED CARTS****40-6-331. Authority of local governing bodies; crossing streets under jurisdiction of Department of Transportation.**

(a) A local governing authority may, by ordinance, designate certain public streets or portions thereof that are under its regulation and control for the combined use of motorized carts and regular vehicular traffic or the use of motorized carts and no other types of motor vehicles and establish the conditions under which motorized carts may be operated upon such streets or portions thereof, including without limitation the conditions under which a person may operate motorized

carts on such designated streets or portions thereof without a driver's license.

(b) Such ordinances may establish operating standards but shall not require motorized carts to meet any requirements of general law as to registration, inspection, or licensing; provided, however, that a local governing authority may, by ordinance, require the local registration and licensing of such carts operated within its boundaries for a fee not to exceed \$15.00, the license to remain permanently with such cart unless such cart is sold or the license is destroyed. The provisions of this subsection and the authority granted by this subsection shall not apply to motorized carts owned by golf courses, country clubs, or other such organized entities which own such carts and make them available to members or the public on a rental basis, provided that such motorized carts are used only on the premises of such golf courses, country clubs, or other such organized entities.

(c) Each local governing authority permitting the use of motorized carts upon the public streets within its jurisdiction shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality or boundaries of the county. Such signs shall be at least 24 by 30 inches in area and shall warn approaching motorists that motorized carts are authorized for use on public streets. All costs associated with such signs shall be funded entirely by the local governing authority. Ordinances establishing operating standards for motorized carts shall not be effective unless appropriate signs giving notice are posted as required by this subsection.

(d)(1) Motorized carts may cross streets and highways that are part of the state highway system only at crossings or intersections designated for that purpose by the Department of Transportation.

(2) Motorized carts may cross streets and highways that are part of a municipal street system or county road system and used by other types of motor vehicles only at crossings or intersections designated for that purpose by the local governing authority having jurisdiction over such system. (Ga. L. 1973, p. 598, § 2; Code 1933, § 68A-1402, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 1241, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2002, p. 506, § 6; Ga. L. 2002, p. 512, § 11; Ga. L. 2004, p. 67, § 3; Ga. L. 2013, p. 872, § 1/HB 384.)

**The 2013 amendment**, effective July 1, 2013, substituted the present provisions of subsection (c) for the former provisions, which read: "Ordinances estab-

lishing operating standards shall not be effective unless appropriate signs giving notice are posted along the public streets affected."



ARTICLE 15  
SERIOUS TRAFFIC OFFENSES

**40-6-390. Reckless driving.****JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****APPLICATION****JURY ISSUES AND INSTRUCTION****General Consideration**

**Speeding merged into reckless driving.** — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless driving. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

**Application****Sufficient evidence to find defendant guilty.**

Evidence was sufficient to show that the defendant was driving a vehicle in a manner exhibiting a reckless disregard for the safety of others because the state trooper who stopped the defendant testified that the defendant was driving 32 miles per hour above the posted speed limit on a portion of the highway designated as a construction zone; in addition, the defendant was driving the vehicle late at night after having admittedly consumed alcohol. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle, forgery, reckless driving, and giving a false name. *Smith v. State*, 319 Ga. App. 164, 735 S.E.2d 153 (2012).

**Jury Issues and Instruction**

**Instruction on justification not authorized.** — Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defendant had no safer option. *Jones v. State*, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

**40-6-391. (For effective date, see note.) Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.**

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor, upon a third conviction thereof, be guilty of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the

sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written



notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) If a person has been convicted of violating subsection (k) of this Code section premised on a refusal to submit to required testing or where such person's alcohol concentration at the time of the offense was 0.08 grams or more, and such person is subsequently convicted of violating subsection (a) of this Code section, such person shall be punished by applying the applicable level or grade of conviction specified in this subsection such that the previous conviction of violating subsection (k) of this Code section shall be considered a previous conviction of violating subsection (a) of this Code section;

(6) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(7) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after July 1, 2008, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way administrative proceedings or sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g)(1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (c) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition



to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section; or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the "Uniform Commercial Driver's License Act," shall be fined as provided in subsection (c) of this Code section.

(j)(1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name of the convicted person, the city, county, and zip code of the convicted person's residential address, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the

publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k)(1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of *nolo contendere* shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(l) (For effective date, see note.) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 47; Ga. L. 1968, p. 448, § 1; Code 1933, § 68A-902, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 1000, § 12; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 17; Ga. L. 1987, p. 3, § 40; Ga. L. 1987, p. 904, § 1; Ga. L. 1988, p. 1893, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, §§ 6-8; Ga. L. 1992, p. 2556, § 2; Ga. L. 1994, p. 1600, § 8; Ga. L. 1996, p. 1413, § 1; Ga. L. 1997, p. 760, § 23; Ga. L. 1999, p. 293, §§ 1, 2; Ga. L. 1999, p. 391, §§ 7, 8; Ga. L. 2001, p. 208, § 1-5; Ga. L. 2005, p. 334, § 18-15.1/HB 501; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2008, p. 498, §§ 2, 3, 4/HB 336; Ga. L. 2009, p. 8, § 40/SB 46; Ga. L. 2010, p. 422, § 1/HB 898; Ga. L. 2013, p. 294, § 4-48/HB 242.)

**Delayed effective date.** — Subsection (l), as set out above, becomes effective January 1, 2014. For version of subsection (l) in effect until January 1, 2014, see the 2013 amendment note.

**The 2013 amendment,** effective January 1, 2014.

ary 1, 2014, deleted “, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child” following “Code Section 16-12-1” at the end of the last sentence of subsection (l). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### NOTICE

#### TESTING

#### EVIDENCE

#### INSTRUCTIONS TO JURY

#### SENTENCE AND PUNISHMENT

### General Consideration

#### Use of presumptions established by § 40-6-392.

Trial court did not err by failing to give the jury the defendant’s requested instruction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant’s request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the defendant to a presumption of sobriety with respect to the defendant’s reckless driving violation. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

**Roadblocks used to identify licenses, insurances, and sobriety.** — When the defendant was convicted of less-safe DUI under O.C.G.A. § 40-6-391, the trial court did not err in denying the defendant’s motion to suppress the results of breath and blood tests because the daylight roadblock was well-identified as a police checkpoint for the stated and authorized purpose of checking driver’s licenses, insurance, and driver sobriety. *Clark v. State*, 318 Ga. App. 873, 734 S.E.2d 839 (2012).

#### Prosecutor’s closing argument did not violate prohibition against golden rule arguments.

— Prosecutor’s remarks during a DUI offense did not violate the prohibition against golden rule arguments by asking the jurors to put themselves in the position of a victim since it is not improper for the state to appeal to the jury to convict for the safety of the community or to curb an epidemic of violence in the community. Nor is it improper for the prosecutor to emphasize to the jury the jury’s responsibility to enforce the law. *Coghlan v. State*, 319 Ga. App. 551, 737 S.E.2d 332 (2013).

#### No provision for judgment notwithstanding the verdict in DUI case.

— Trial court did not err in denying the defendant’s motion for judgment notwithstanding the verdict (JNOV) after the defendant was convicted of driving under the influence to the extent that the defendant was a less-safe driver in violation of O.C.G.A. § 40-6-391(a)(1) because JNOV was not a remedy available in a criminal case. *Masood v. State*, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

### Notice

#### Notice of implied consent rights.

Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the



defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

### Testing

#### Field sobriety tests, etc.

Defendant's motion to suppress evidence obtained on the night of the defendant's arrest for driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391(a)(1) should not have been granted as the defendant was not in custody for purposes of *Miranda* during the investigation. *State v. Mosley*, No. A12A1830, 2013 Ga. App. LEXIS 217 (Mar. 19, 2013).

#### Requests for chemical tests.

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when a officer learned that the defendant did not have sufficient cash for a blood test at one of the recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient. *State v. Davis*, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

#### Breath test admissible.

Trial court did not abuse the court's discretion by denying the defendant's motion for mistrial after the jury accidentally heard the numerical result of an Alco-Sensor test because the trial court gave the jury a curative instruction, and the totality of the evidence was sufficient by itself to support the jury's finding that the defendant was guilty beyond a reasonable doubt of driving under the influence, O.C.G.A. § 40-6-391(k)(1). *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Court of appeals did not err in reversing

an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state administered breath test. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

**Refusal not evidence of the presence of alcohol.** — Jury charge that a DUI defendant's refusal to submit to a blood alcohol test could create an inference that the test would show the presence of alcohol which impaired the defendant's driving was plain error, requiring a new trial, because the charge shifted the burden of proof to the defendant, requiring the defendant to rebut the inference that the defendant was an impaired driver. *Wagner v. State*, 311 Ga. App. 589, 716 S.E.2d 633 (2011).

**Trial court did not err in denying defendant's motion to exclude state-administered test results.** — Trial court did not err in denying the defendant's motion to exclude the results of a state-administered breath test because a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was so not misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals over the age of 21. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

**Miranda warnings before administering field sobriety tests.**

Trial court did not err by denying the defendant's motion to suppress or motion for new trial with regard to the defendant's convictions for driving under the

influence because it was not necessary for the stopping officer to advise the defendant of the Miranda rights prior to administering the field sobriety tests since the defendant was not under arrest. Officers are not required to provide warnings under Miranda prior to administering field sobriety tests during a traffic stop unless the suspect is in custody. *Appling v. State*, No. A12A2137, 2013 Ga. App. LEXIS 193 (Mar. 14, 2013).

### Evidence

#### **Denial of motion in limine not error.**

Trial court properly denied defendant's motion in limine and upheld defendant's conviction for driving under the influence as the traffic stop of his vehicle was justified since the evidence showed that he committed a traffic offense by making an abrupt turning maneuver in his vehicle to evade a roadblock, which was a sufficiently suspicious and deliberately furtive response to the road check so as to give the officer at least a reasonable suspicion of defendant's criminal activity and to warrant further investigation. *Stinson v. State*, 318 Ga. App. 351, 733 S.E.2d 390 (2012).

#### **Evidence sufficient to justify brief investigatory stop.**

With regard to the defendant's conviction for driving under the influence, the trial court properly denied the defendant's motion to suppress because the officer had a reasonable, articulable suspicion to detain the defendant upon finding the defendant asleep behind the wheel of a vehicle with the engine running, and the defendant was unresponsive when the officer initially shined the officer's flashlight inside the vehicle. *Pierce v. State*, 319 Ga. App. 721, 738 S.E.2d 307 (2013).

**Request for an independent test.** — Allegedly impaired driver's statement that the driver wanted "more tests" could not reasonably be construed as a request for an independent chemical test of the driver's own choosing because the driver made the request to the officer immediately after being given field sobriety tests. Therefore, the results of the state-administered test were properly ad-

mitted at trial. *Avery v. State*, 311 Ga. App. 595, 716 S.E.2d 729 (2011).

**Delay in releasing state administered blood test results.** — State's failure to immediately inform a defendant of the results of the state administered test does not create a situation where the defendant is left with no, or so little, information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally unfair and this fact alone does not support a due process claim. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

#### **Use of roadblock.**

Testimony from a sheriff's chief deputy authorized a trial court to find that a sergeant had authority to implement roadblocks and that the sergeant had a legitimate primary purpose for implementing a roadblock at which the defendant was stopped and arrested, which was highway safety and driver sobriety. *Martin v. State*, 313 Ga. App. 226, 721 S.E.2d 180 (2011).

Trial court did not err in denying the defendant's motion to suppress evidence seized at a roadblock because the state met the state's burden of establishing the legitimate purpose of the roadblock by introducing a certified copy of a department of public safety roadblock approval form; the programmatic purposes set out in the roadblock form were supported by the other evidence at the suppression hearing, and the police officers' actions at the scene were in line with those purposes. *Hite v. State*, 315 Ga. App. 221, 726 S.E.2d 704 (2012), cert. denied, No. S12C1286, 2012 Ga. LEXIS 1020 (Ga. 2012).

#### **Stop authorized when officer witnesses driver weaving outside lane.**

Trial court did not err in denying the defendant's motion to suppress because the officer was justified in stopping the defendant's vehicle based on the videotaped evidence that established that the officer observed the defendant's vehicle failing to maintain the vehicle's lane in

violation of O.C.G.A. § 40-6-48(1). *Acree v. State*, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

**Stop held invalid.**

Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of O.C.G.A. § 40-6-120(a)(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. *State v. Mincher*, 313 Ga. App. 875, 723 S.E.2d 300 (2012).

**Use of circumstantial evidence.**

Evidence that a defendant was found slumped over, asleep, in the driver's seat of a car in a fast food restaurant, with the defendant's hands on the steering wheel, the engine running, the headlights on, and two empty bottles of vodka, along with evidence that the defendant admitted drinking prior to driving to the restaurant, was sufficient to convict the defendant of driving under the influence in violation of O.C.G.A. § 40-6-391(a)(5). *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

**Police officers' opinion testimony that the defendant was under the influence, etc.**

Evidence was sufficient to convict a defendant of DUI (less safe) in violation of O.C.G.A. § 40-6-391(a)(2) after the defendant ran a police officer off the road, did not maintain the defendant's lane of travel, and exhibited impairment on sobriety tests; a blood test showed positive results for lorazepam, zolpidem, and mirtazapine. *Rivera v. State*, 309 Ga. App. 544, 710 S.E.2d 694 (2011).

**Admissibility of properly-conducted breathalyzer test.**

Trial court properly denied defendant's motion to suppress the results of the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the

process go by real quick for you," was not coercive or deceptively misleading and did not render the defendant incapable of making an informed decision about whether to submit to the breath test. *Miller v. State*, 317 Ga. App. 504, 731 S.E.2d 393 (2012).

**Suppression motion properly denied.**

Trial court did not err in denying the defendant's motion to suppress the results of a blood-alcohol-content test that was obtained via the seizure of the defendant's blood samples and pursuant to a search warrant because the warrant was narrowly drafted to seek only the blood samples and medical records from the hospital where the defendant was treated on the night of the accident; even if the warrant could be construed as authorizing a broader seizure of all of the defendant's medical records instead of only those relevant to the defendant's treatment related to the accident, the defendant failed to show that any such broader seizure occurred and, thus, failed to show any harm. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

**Evidence sufficient to support conviction of driving under influence.**

Assuming that the defendant's post-verdict motion for judgment notwithstanding the verdict was a motion for new trial, it was, nevertheless, wholly without merit because the evidence was sufficient to convict the defendant of driving under the influence (to the extent that the defendant was a less-safe driver, O.C.G.A. § 40-6-391(a)(1)) because a police officer administered two field-sobriety tests, and defendant exhibited clues of impairment on each. *Masood v. State*, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a



blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction on three counts of endangering a child under the age of 14 while driving under the influence, in violation of O.C.G.A. § 40-6-391(a)(1), because defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and the defendant's blood alcohol content was 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

The evidence was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of driving under the influence (DUI) less safe in violation of O.C.G.A. § 40-6-391(a)(1) because upon questioning, the defendant told the officer that the defendant had been drinking, an alco-sensor administered to the defendant tested positive for alcohol, and a second officer smelled the odor of alcohol on the defendant's breath. *Cordy v. State*, 315 Ga. App. 849, 729 S.E.2d 13 (2012).

Evidence that the defendant was found in the driver's seat of the irregularly parked vehicle with the keys in the ignition, the defendant was the sole occupant of the vehicle, there was no evidence another party drove the vehicle to the location, the defendant failed field sobriety tests, and the defendant had a blood-alcohol concentration of .212 grams according to intoxilyzer tests was sufficient to support the defendant's conviction for driving with an unlawful alcohol concentration. *Stallings v. State*, 319 Ga. App. 587, 737 S.E.2d 592 (2013).

Defendant's conviction for DUI was affirmed because the officer's testimony was sufficient to prove beyond a reasonable doubt that the defendant was under the influence of alcohol. The officer's opinion testimony that the defendant was under the influence of alcohol was direct evi-

dence of the defendant's guilt; thus, the reasonable hypothesis rule did not apply. *Hinton v. State*, 319 Ga. App. 673, 738 S.E.2d 120 (2013).

**Evidence sufficient to establish that the defendant was a "less safe driver," etc.**

Sufficient evidence including: (1) the defendant's excessive speed and erratic driving; (2) the defendant's possession of methamphetamine; and (3) the defendant's blood results showing the presence of methamphetamine and amphetamine, supported the jury's finding that the defendant's ability to safely operate the vehicle was impaired by the defendant's ingestion of methamphetamine and amphetamine. *Kar v. State*, 318 Ga. App. 379, 733 S.E.2d 387 (2012).

**Evidence of prior conviction as character evidence.** — Although the evidence was sufficient to support defendant's convictions for vehicular homicide under O.C.G.A. § 40-6-391(b), the court's admission of similar-transaction evidence, consisting of a prior methamphetamine conviction, was erroneous as irrelevant character evidence under former O.C.G.A. § 24-2-2 (see now O.C.G.A. § 24-4-404), and the conviction was reversed. *McMullen v. State*, 316 Ga. App. 684, 730 S.E.2d 151 (2012).

**Suppression motion to exclude breath test results properly denied.**

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of *Miranda*, the portable test was administered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia Implied Consent Statute, O.C.G.A. § 40-6-392. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

**Admissibility of field sobriety tests.**

Trial court did not err in denying the defendant's motion to suppress evidence of the results of field sobriety tests on the ground that the tests were administered without the defendant having the benefit of a *Miranda* warning because the defendant was not in custody until after the

field sobriety tests were complete; the defendant was allowed to walk around and was not put into handcuffs or a patrol car while the defendant and the first officer awaited the arrival of the second officer, and a reasonable person in the defendant's position could conclude that the person's freedom of action was only temporarily curtailed and that a final determination of the person's status was simply delayed. *DiMauro v. State*, 310 Ga. App. 526, 714 S.E.2d 105 (2011).

Instructions to Jury

**Preliminary instruction was harmless error.** — Trial court erred in mentioning the excluded results of a breath test when instructing the jury because the preliminary instruction was both unnecessary and improper, but the error was harmless; there was no reasonable probability that the preliminary instruction impacted the jury's verdict because the jury was presented with overwhelming evidence that the defendant was a less-safe driver including: (1) a video of the traffic

stop, which showed the defendant's less-than-stellar performance on the field sobriety tests, the defendant's difficulty following instructions, and the defendant's occasionally belligerent demeanor; (2) the defendant's admission to consuming alcohol; (3) the officer's testimony regarding the defendant's traffic violation, the officer's observations during the stop, and the positive results of the alco-sensor test; and (4) similar-transaction evidence. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

Sentence and Punishment

**Harmless error because of merger.** — Defendant's count for driving under the influence (DUI) less safe, in violation of O.C.G.A. § 40-6-391(a)(1), was merged into the defendant's DUI per se conviction. In light of the merger, the DUI less safe count was void and any error as to that count was harmless. *Greene v. State*, 312 Ga. App. 666, 722 S.E.2d 77 (2011), cert. denied, No. S12C0516, 2012 Ga. LEXIS 670 (Ga. 2012).

40-6-392. Chemical tests for alcohol or drugs in blood.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- CONSTITUTIONALITY
- PERFORMANCE OF TESTS
- ADMISSIBILITY OF RESULTS
- JUDICIAL PROCEEDINGS

General Consideration

**Evidence of implied consent warning being provided.** — Although a videotape of a defendant's traffic stop did not show the officer reading the defendant the implied consent notice, the videotape's sound was poor and there were moments when both the officer and the defendant were off-camera. The officer was further heard telling the defendant that what happened would depend on the results of the test, implying that the officer had read

the notice. Additionally, the officer testified at trial without objection that the officer had read the notice and that the defendant had consented. *Rowell v. State*, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

**Impact of voluntary consent to test.** — Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant volun-

tarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

**Miranda warning unnecessary.**

An arresting officer was not required to read a defendant a Miranda warning during a traffic stop based on the officer's statement to the defendant that if the defendant did not blow into an alco-sensor properly, the officer would take the defendant to jail, because the defendant voluntarily consented to take the test and made several attempts before the officer made the statement. *Rowell v. State*, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

**Results admissible although not given to defendant immediately.** —

Trial court erred in suppressing the results of an alcohol test on the grounds that the results were not given to the defendant immediately after the test. There was no requirement in the procedural rules enacted pursuant to O.C.G.A. § 40-6-392(a)(1)(A) by the Division of Forensic Sciences that the results be given to defendant at any particular time. *State v. Padidham*, 310 Ga. App. 839, 714 S.E.2d 657 (2011).

### Constitutionality

**Procedural due process rights provided.**

State's failure to immediately inform a defendant of the results of the state-administered test does not create a situation where the defendant is left with no, or so little, information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally unfair and this fact alone does not support a due process claim. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

### Performance of Tests

**Failure to obtain independent test based on defendant's actions.** —

State-administered breath test results were admissible despite defendant's request for an independent test because the evidence showed that the officer was will-

ing to take defendant for another test but that the defendant refused to go with the arresting officer, demanding another driver, and none was available. *Luckey v. State*, 313 Ga. App. 502, 722 S.E.2d 114 (2012).

**Request for independent test.**

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when an officer learned that the defendant did not have sufficient cash for a blood test at one of the recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient. *State v. Davis*, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

### Admissibility of Results

**Properly-conducted test admissible.**

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

**Admissibility of an alco-sensor test result.**

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of *Miranda*, the portable test was adminis-



tered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia Implied Consent Statute, O.C.G.A. § 40-6-392. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

### Judicial Proceedings

#### Presumption of sobriety.

Trial court did not err by failing to give the jury the defendant's requested in-

struction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant's request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the defendant to a presumption of sobriety with respect to the defendant's reckless driving violation. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

## 40-6-393. Homicide by vehicle.

### JUDICIAL DECISIONS

#### ANALYSIS

##### GENERAL CONSIDERATION

##### EVIDENCE

##### JURY INSTRUCTIONS

#### General Consideration

**Offense created a foreseeable risk of death by definition.** — Although a jury was not explicitly instructed that the jury was required to find that a defendant was acting in a dangerous manner in order to convict the defendant of felony murder based on theft by receiving, the jury did in fact make such a finding when the jury found the defendant guilty of vehicular homicide by reckless driving because that offense, by definition, created a foreseeable risk of death. *State v. Kelly*, 290 Ga. 29, 718 S.E.2d 232 (2011).

**Rule of lenity did not apply to hit-and-run and vehicular homicide.** — Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. *Rouen v. State*, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

**Application to nondrivers.** — Nothing in the statutory language of O.C.G.A. § 40-6-393(c) prohibits a vehicular homicide conviction against a pedestrian or a

non-driver. Indeed, an individual may be a party to a violation of the traffic laws without driving. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

#### Evidence

##### Evidence sufficient for conviction.

Evidence that a defendant was intoxicated at twice the legal limit and crashed the defendant's car into a tree, killing the defendant's passenger, was sufficient for the jury to find the defendant guilty of first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a), although the defendant claimed the passenger grabbed the steering wheel. *Brown v. State*, 310 Ga. App. 285, 712 S.E.2d 521 (2011).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defen-

dant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction for first-degree homicide by vehicle by violating O.C.G.A. § 40-6-391(a)(5) because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and defendant's blood alcohol content was 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Double jeopardy did not bar the defendant's retrial for misdemeanor vehicular homicide under O.C.G.A. § 40-6-393(c) as the evidence supported the conviction. The evidence established that by crossing a highway outside of a crosswalk, the defendant placed a young child in the path of a quickly approaching van, causing the child to be struck and fatally injured. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Jury found defendant guilty of not only

vehicular homicide but also reckless driving (not speeding) and less-safe driving under the influence (DUI). Accordingly, the jury's verdict of first-degree vehicular homicide was proper. *Otuwa v. State*, 319 Ga. App. 339, 734 S.E.2d 273 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle, forgery, reckless driving, and giving a false name. *Smith v. State*, 319 Ga. App. 164, 735 S.E.2d 153 (2012).

### Jury Instructions

**Instruction on accident.** — Appellate court erred in reversing defendant's conviction for vehicular homicide based on her failure to stop for a pedestrian in a crosswalk because those charges were strict liability offenses to which the accident defense did not apply since it was undisputed she voluntarily drove into the crosswalk and struck the child. *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

## 40-6-393.1. Feticide by vehicle; penalties.

### JUDICIAL DECISIONS

**Evidence sufficient to support conviction.** — Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A.

§ 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

## 40-6-394. Serious injury by vehicle.

### JUDICIAL DECISIONS

**Evidence sufficient to support conviction.**

Sufficient evidence supported defendant's conviction for serious injury by ve-

hicle because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a

clear plastic bottle containing 77 proof 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).  
alcohol was found on the floorboard, and  
the defendant's blood alcohol content was

**40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.**

(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

(b)(1) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a high and aggravated misdemeanor and:

(A) Upon conviction shall be fined not less than \$500.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than ten days nor more than 12 months. Any period of such imprisonment in excess of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

(B) Upon the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$1,000.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 30 days nor more than 12 months. Any period of such imprisonment in excess of 30 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$2,500.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 90 days nor more than 12 months. Any period of such imprisonment in excess of 90 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph,



previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under paragraph (1) of this subsection will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this subsection.

(4) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this subsection upon a conviction of violating this subsection or upon conviction of violating any ordinance adopting the provisions of this subsection.

(5)(A) Any person violating the provisions of subsection (a) of this Code section who, while fleeing or attempting to elude a pursuing police vehicle or police officer:

(i) Operates his or her vehicle in excess of 20 miles an hour above the posted speed limit;

(ii) Strikes or collides with another vehicle or a pedestrian;

(iii) Flees in traffic conditions which place the general public at risk of receiving serious injuries;

(iv) Commits a violation of paragraph (5) of subsection (a) of Code Section 40-6-391; or

(v) Leaves the state

shall be guilty of a felony punishable by a fine of \$5,000.00 or imprisonment for not less than one year nor more than five years or both.

(B) Following adjudication of guilt or imposition of sentence for a violation of subparagraph (A) of this paragraph, the sentence shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense.

(c) It shall be unlawful for a person:

(1) To impersonate a sheriff, deputy sheriff, state trooper, agent of the Georgia Bureau of Investigation, agent of the Federal Bureau of Investigation, police officer, or any other authorized law enforcement officer by using a motor vehicle or motorcycle designed, equipped, or

marked so as to resemble a motor vehicle or motorcycle belonging to any federal, state, or local law enforcement agency; or

(2) Otherwise to impersonate any such law enforcement officer in order to direct, stop, or otherwise control traffic. (Code 1933, § 68A-904, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 2; Ga. L. 1983, p. 836, § 1; Ga. L. 1985, p. 758, § 19; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 585, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 831, § 3; Ga. L. 1995, p. 855, § 2; Ga. L. 2004, p. 450, § 1; Ga. L. 2010, p. 256, § 2/HB 1231; Ga. L. 2012, p. 729, § 1/HB 827.)

**The 2012 amendment**, effective July 1, 2012, in the first sentence of subparagraphs (b)(1)(A), (b)(1)(B), and (b)(1)(C), substituted “and the fine” for “which fine”, and inserted a comma after “suspension, stay, or probation”; and deleted “in an attempt to escape arrest for any offense, other than a violation of this chapter not expressly provided for in this paragraph”

following “police officer” in subparagraph (b)(5)(A). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2012, p. 729, § 2/HB 827, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to offenses committed on or after July 1, 2012.

## JUDICIAL DECISIONS

### Counts did not merge.

Trial court properly sentenced the defendant on five separate counts of attempting to elude a police officer because the evidence supported the jury’s conclusion that the defendant willfully led police on a dangerous high speed chase after being given clear signals by five separate police vehicles to stop; it is the act of fleeing from an individual police vehicle or police officer after being given a proper visual or audible signal to stop from that individual police vehicle or officer, and not just the act of fleeing itself, that forms the proper “unit of prosecution” under O.C.G.A. § 40-6-395. *Smith v. State*, 290 Ga. 768, 723 S.E.2d 915 (2012).

### Sufficiency of accusation.

Trial court did not err in denying the defendant’s motion in arrest of judgment as to the count of fleeing and attempting to elude police because the indictment charged that the defendant unlawfully willfully failed to bring a vehicle to a stop after having been given an audible and visual signal to bring the vehicle to a stop by an officer while fleeing in an attempt to escape arrest for theft by receiving and did flee in traffic conditions which placed

the general public at risk of receiving serious injuries in violation of O.C.G.A. § 40-6-365. *Dixson v. State*, 313 Ga. App. 379, 721 S.E.2d 555 (2011).

### Indictment charging the defendant with eluding police was not fatally defective, etc.

Indictment charging the defendant with “fleeing or attempting to elude,” alleging that the defendant unlawfully and willfully failed to bring the defendant’s vehicle to a stop after a pursuing police officer gave a visual and audible signal, was sufficient to withstand a general demurrer. *State v. Wilson*, 318 Ga. App. 88, 732 S.E.2d 330 (2012).

### Evidence sufficient.

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-395(a) and (b)(5)(A), 40-6-270(a), and 40-6-271(a), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed

officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. *Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence that the defendant traveled 0.7 miles before stopping after the officers engaged the emergency lights and siren on the patrol car, passing a number of safe

locations to stop, supported the defendant's conviction for fleeing and attempting to elude. *King v. State*, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

**Cited** in *Myers v. State*, 311 Ga. App. 668, 716 S.E.2d 772 (2011); *Russell v. State*, 319 Ga. App. 472, 735 S.E.2d 797 (2012).

#### 40-6-397. Aggressive driving; penalty.

### JUDICIAL DECISIONS

**Cited** in *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

## CHAPTER 7

### OFF-ROAD VEHICLES

Sec.

40-7-3. "Off-road vehicle" defined.

#### 40-7-3. "Off-road vehicle" defined.

As used in this chapter, the term "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain and not intended for use predominantly on public roads. The term includes, but is not limited to, four-wheel drive vehicles, low-pressure tire vehicles, two-wheel vehicles, nonhighway tire vehicles, amphibious machines, ground effect or air cushion vehicles, and any other means of transportation deriving power from any source other than muscle or wind. The term shall exclude any motorboat; any military, fire, law enforcement, or other government vehicle being used for official purposes; any vehicles used exclusively on airports; all farm machinery, farm tractors, and other vehicles used exclusively for agricultural purposes; any self-propelled equipment for harvesting and transportation of forest products, for clearing land for planting, for utility services and maintenance, for earth moving, construction, or mining; and self-propelled lawnmowers, snowblowers, garden or lawn tractors, or golf carts, while such vehicles are being used exclusively for their designed purposes. (Ga. L. 1976, p. 330, § 3; Ga. L. 2010, p. 98, § 1-1/HB 207; Ga. L. 2012, p. 726, § 4/HB 795.)



The 2012 amendment, effective May 1, 2012, in the second sentence, substituted “The term includes” for “It includes”, substituted “four-wheel drive vehicles, low-pressure tire vehicles, two-wheel vehicles, nonhighway tire vehicles,” for “four-wheel drive or low-pressure tire vehicles, two-wheel vehicles,”, and substituted “muscle or wind. The term” for “muscle or wind, except that such term”.

CHAPTER 8

EQUIPMENT AND INSPECTION OF MOTOR VEHICLES

Article 1	Sec.	
Equipment Generally		enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.
PART 5		
EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES	40-8-91.1.	Marking and equipment of all-terrain vehicles used as law enforcement vehicles.
Sec.		
40-8-91.	Marking and equipment of law	

Cross references. — Observance of laws by motor carriers, § 40-1-122.

ARTICLE 1  
EQUIPMENT GENERALLY

PART 1  
GENERAL PROVISIONS

40-8-5. Alteration of odometer; involvement with devices which cause odometer to register other than actual mileage; penalties.

RESEARCH REFERENCES

ALR. — Validity, construction and application of state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Validity of statutory provisions, construction of statute and particular terms, and remedies, 66 ALR6th 351.	Validity, construction, and application of state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Statutes of limitation, parties to action, evidentiary matters, and particular violations of statute, 67 ALR6th 209.
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## PART 4

HORNS, EXHAUST SYSTEMS, MIRRORS, WINDSHIELDS, TIRES, SAFETY BELTS,  
ENERGY ABSORPTION SYSTEMS**40-8-72. Mirrors.**

## JUDICIAL DECISIONS

**Cited** in *State v. Reid*, 313 Ga. App. 633, 722 S.E.2d 364 (2012).

**40-8-73.1. Affixing of materials which reduce light transmission or increase light reflectance through windows or windshields.**

## JUDICIAL DECISIONS

**Basis for traffic stop.**

Trial court did not err in denying the defendant's motion to suppress after finding that the excessive-window-tinting statute, O.C.G.A. § 40-8-73.1(b), was unconstitutional because an officer had a reasonable articulable suspicion to justify the traffic stop; the officer observed that the defendant's vehicle had darkly tinted windows and reasonably believed that to be in violation of § 40-8-73.1, and the fact that the statute was later found to be unconstitutional did not render the stop

invalid. *Christy v. State*, 315 Ga. App. 647, 727 S.E.2d 269 (2012).

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted because the officer had probable cause to believe that the car had illegal window tint. *United States v. Whitlock*, No. 12-10989, 2012 U.S. App. LEXIS 21853 (11th Cir. Oct. 19, 2012) (Unpublished).

**Cited** in *Perry v. State*, 317 Ga. App. 885, 733 S.E.2d 57 (2012).

## PART 5

## EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES

**40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.**

(a) Except as provided in subsection (b) of this Code section, any motor vehicle which is used on official business by any person authorized to make arrests for traffic violations in this state, or any municipality or county thereof, shall be distinctly marked on each side and the back with the name of the agency responsible therefor, in letters not less than four inches in height.

(b) Any motor vehicle, except as hereinafter provided in this subsection, used by any employee of the Georgia State Patrol for the purpose of enforcing the traffic laws of this state shall be distinctly painted, marked, and equipped in such manner as shall be prescribed by the

commissioner of public safety pursuant to this Code section. The commissioner in prescribing the manner in which such vehicles shall be painted, marked, or equipped shall:

(1) Require that all such motor vehicles be painted in a two-toned uniform color. The hood, top, and the top area not to exceed 12 inches below the bottom of the window opening thereof shall be a light gray color and the remaining portion of said motor vehicle shall be painted a dark blue color;

(2) Require that any such motor vehicle be equipped with at least one lamp which when lighted shall display a flashing or revolving colored light visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicle; and

(3) Require that any such motor vehicle shall be distinctly marked on each side and the back thereof with the wording "State Patrol" in letters not less than six inches in height of a contrasting color from the background color of the motor vehicle.

Notwithstanding the above provisions, it shall be permissible for the commissioner to allow not more than five motor vehicles per State Patrol post to be employed in traffic law enforcement which are painted any solid color designated by the commissioner and marked with "State Patrol" in six inch high letters of a contrasting color.

(c) It shall be unlawful for any person, except persons lawfully entitled to own vehicles for law enforcement purposes, to paint, mark, or equip any motor vehicle in the same manner prescribed by this Code section or by the commissioner for law enforcement vehicles.

(d) When a law enforcement vehicle is disposed of, or is not in use for law enforcement, the lettering and colored lights must be removed. Any person using such vehicle for personal use prior to removing colored lights and lettering shall be guilty of a misdemeanor.

(e) Whenever a motorist driving on the roadways of this state is directed to stop by a law enforcement officer in a law enforcement vehicle marked as required under this Code section, the motorist may continue to drive until a reasonably safe location for stopping is reached. Such motorist shall indicate to the officer his or her intent to proceed to a safe location by displaying the vehicle's flashing lights or turn signal. In proceeding to a safe location, the motorist shall observe the posted maximum speed limit.

(f) An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A; Ga. L. 1966, p. 166, § 1; Ga. L. 1976, p. 208, § 1; Ga. L. 1986, p. 802, §§ 1-3; Ga. L. 1987, p. 3, § 405;



Ga. L. 2006, p. 231, § 3/SB 64; Ga. L. 2006, p. 255, § 1/SB 454; Ga. L. 2010, p. 105, § 1-1/HB 981.)

**Editor's notes.** — Ga. L. 2010, p. 105, § 3-1/HB 981, not codified by the General Assembly, provided for the repeal of the amendment to subsection (b) of this Code section by that Act, effective June 30, 2013.

**40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.**

(a) As used in this Code section, the term “all-terrain vehicle” means any motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 50 inches or less in width.

(b) Every all-terrain vehicle must comply with the equipment and marking specifications set forth in this article before such vehicle can be used by law enforcement agencies and officers upon the public roads of this state. All provisions of law relating to safe operation of law enforcement or emergency vehicles shall be applied to the operation of such all-terrain vehicles.

(c) Any all-terrain vehicle which is operated by law enforcement agencies and officers upon the public roads of this state shall be registered and licensed in accordance with the provisions of Code Section 40-2-37. (Code 1981, § 40-8-91.1, enacted by Ga. L. 2006, p. 675, § 1/HB 1216; Ga. L. 2012, p. 726, § 5/HB 795.)

**The 2012 amendment**, effective May 1, 2012, substituted the present provisions of subsection (a) for the former provisions, which read: “As used in this Code section, the term ‘all-terrain vehicle’ means any motorized vehicle designed for off-road use which is equipped with at least a 500 cubic centimeter engine, four or more low pressure tires, a seat to be straddled by the operator, and handlebars for steering control.”

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**CHAPTER 9**

**REPORTING ACCIDENTS; GIVING PROOF OF FINANCIAL RESPONSIBILITY**

**Cross references.** — Settlement offers and agreement for personal injury, bodily injury, and death from motor vehicle, § 9-11-67.1. Motor carrier bond or insurance, § 40-1-112.

**CHAPTER 12**

**ACTIONS AGAINST NONRESIDENT MOTORISTS**

**40-12-3. Venue of actions against nonresidents; nonresident joint defendant.**

**JUDICIAL DECISIONS**

**Cited** in *Gowdy v. Schley*, 317 Ga. App. 693, 732 S.E.2d 774 (2012).

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**CHAPTER 14**

**USE OF SPEED DETECTION AND TRAFFIC-CONTROL  
SIGNAL MONITORING DEVICES**

**ARTICLE 2**

**SPEED DETECTION DEVICES**

**40-14-7. Visibility of vehicle from which device is operated.**

**JUDICIAL DECISIONS**

**Cited** in *Hernandez-Lopez v. State*, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

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**CHAPTER 15**

**MOTORCYCLE OPERATOR SAFETY TRAINING  
PROGRAM**

Sec.  
40-15-4. Coordinator authorized; duties  
and requirements.

**40-15-4. Coordinator authorized; duties and requirements.**

(a) The commissioner shall appoint a state-wide motorcycle safety coordinator who shall carry out and enforce the provisions of this chapter and the rules and regulations of the department. The coordi-

nator shall be placed in the unclassified service as defined by Code Section 45-20-2 and shall serve at the pleasure of the commissioner.

(b) The coordinator shall also be authorized to:

(1) Promote motorcycle safety throughout the state;

(2) Provide consultation to the various departments of state government and local political subdivisions relating to motorcycle safety; and

(3) Do any other thing deemed necessary by the commissioner to promote motorcycle safety in the state. (Code 1981, § 40-15-4, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1505, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-62/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the second sentence of subsection (a).

**Editor’s notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

## CHAPTER 16

### DEPARTMENT OF DRIVER SERVICES

Sec.

40-16-2. Primary responsibilities.

#### 40-16-2. Primary responsibilities.

(a) There is created the Department of Driver Services. The Department of Driver Services shall be a successor agency to and continuation of the former Department of Motor Vehicle Safety. The department shall be the agency primarily responsible for:

(1) Administration of the laws and regulations relating to drivers’ licenses, as provided for in Chapter 5 of this title;

(2) Administration of the laws and regulations relating to proof of financial responsibility, as provided for in Chapter 9 of this title;

(3) Administration of laws relating to ignition interlock devices for use by driving under the influence offenders;



(4) Administration of laws relating to driver training schools, driver improvement clinics, DUI Alcohol or Drug Use Risk Reduction Programs, and commercial driving schools;

(5) Administration of laws relating to motorcycle safety programs;

(6) Administration of laws and regulations relating to issuance of limousine chauffeur permits; and

(7) Administration of any other laws specifically providing for their administration by the department.

(b) Responsibility for the following functions formerly exercised by the Department of Motor Vehicle Safety is transferred as follows:

(1) Promulgation of regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32 shall be vested in the Department of Transportation; and administrative enforcement of such regulations and the law enforcement function of apprehending and citing violators of such laws and regulations are transferred to the Department of Public Safety, as well as the function of promulgating regulations relative to its enforcement function;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements is transferred to the Department of Public Safety;

(3) Administration of laws and regulations relating to certification of motor carriers and limousine carriers is transferred to the Department of Public Safety and administration of laws and regulations relating to carrier registration and registration and titling of vehicles is transferred to the Department of Revenue;

(4) Administration of laws relating to motor vehicle franchise practices is transferred to the Department of Revenue;

(5) Administration of laws relating to handicapped parking permits is transferred to the Department of Revenue;

(6) Responsibility for establishment of safety standards for motor vehicles and motor vehicle components is generally transferred to the Department of Public Safety except as may be specifically otherwise provided by law;

(7) Administration of laws relating to hazardous materials carriers is transferred to the Department of Public Safety;

(8) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority is transferred to the Department of Public Safety: rest areas, truck-weighing stations or checkpoints, wayside

parks, parking facilities, toll facilities, and any buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(9) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers is transferred to the Department of Public Safety;

(10) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes is transferred to the Department of Public Safety;

(11) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system is transferred to the Department of Public Safety;

(12) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system is transferred to the Department of Public Safety; and

(13) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system is transferred to the Department of Public Safety.

(c) In the performance of its duties, the department shall be required to comply with all applicable federal laws and rules and regulations and shall certify that the state is in compliance with all provisions and requirements of all applicable federal-aid acts and programs. (Code 1981, § 40-16-2, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2000, p. 1199, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2003, p. 484, § 14; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2012, p. 580, § 11/HB 865.)

**The 2012 amendment**, effective July 1, 2012, substituted "Department of Public Safety" for "Public Service Commission" near the middle of paragraph (b)(3).

















